

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43907
Docket No. MW-44928
20-3-NRAB-00003-180412**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(National Railroad Passenger Corporation (AMTRAK)
(- Northeast Corridor**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) “The Agreement was violated when the Carrier assigned Electric Traction Lineman Trainee A. Patitucci to perform overtime service on December 4, 2016 at the west bound tunnel track at Mile Post 20.1 instead of calling and assigning senior Lineman/HRO Operator W Slivinski thereto (System File NEC-BMWE-SD-5516 AMT).”**
- (2) “As a consequence of the violation referred to in Part (1) above, Claimant W Slivinski shall now be compensated four hundred eighty-three dollars and sixty cents (\$483. 60), ten dollars (\$10. 00) differential and twenty dollars (\$20. 00) meal compensation.”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant established and holds seniority as a Class "A" Lineman/HRO operator, headquartered at Hamilton, New Jersey. On December 4, 2016, the Carrier determined it was necessary to assign an electric traction lineman to perform overtime work at Mile Post 20.1 between the hours of 7:00 AM and 5:00 PM. The Carrier called and assigned A. Patitucci to the protection assignment.

On the claim date, Patitucci was in the Electric Traction Training Program, with two more days before his final field qualifications were completed. It is undisputed that the Claimant holds more seniority and was not called for the overtime assignment.

The Organization filed this claim on January 18, 2017, contending that Trainee Patitucci was improperly called to perform the overtime protection work, rather than the Claimant, who was more senior and fully qualified and available to perform the work. The Carrier denied the claim on March 15, 2017, asserting that Patitucci was qualified as an ET Lineman on November 21, 2016. The parties were unable to resolve the claim on-property, so it is now properly before this Board for final adjudication.

The Organization contends that the Carrier failed to comply with Rule 55, Preference for Overtime, which reads, in part:

“(a) Employees will, if qualified and available, be given preference for overtime work, including calls, on work ordinarily and customarily performed by them, in order of their seniority.”

The Organization contends that the Claimant was the senior qualified and available electric traction lineman who ordinarily and customarily performed this type of work and that Patitucci was an electric traction lineman trainee and was not a qualified Class A lineman until December 6, 2016, as shown by the Carrier's own records.

The Organization contends that the May 15, 1995, memorandum cited by the Carrier, which purports to separate Maintenance Electricians/Linemen and Construction Electricians/ Lineman, did not apply to this territory, so the fact that the Claimant was a Construction Lineman and Patitucci was a Maintenance Lineman was

not relevant. The Organization contends that the Claimant is entitled to his requested remedy of compensation for the disputed hours at the overtime rate.

The Carrier contends that the Electric Traction Training Agreement authorized it to call Patitucci for the assignment. It reads, in part:

“[III](c) Trainees will perform any work done by a qualified Mechanic or such other work as is assigned in connection with his training, but:

- (1) Trainees will not work in lieu of a qualified mechanic when qualified mechanics are available on their advertised territory, established in accordance with the Agreement dated April 27, 1977.**
- 2) Trainees will be assigned overtime work in accordance with their seniority in their respective working territories.”**

The Carrier contends that Patitucci was properly assigned as a trainee under the Training Agreement and that the Organization’s position on this claim violates the Training Agreement. The Carrier contends that, in any case, Patitucci was working with another qualified Class “A” man, and therefore, was properly assigned to work the overtime as a trainee. In addition, the Carrier contends that the on-property record shows that Patitucci finished his training exams by November 21, 2016 and was promoted to the Lineman pay scale. Thus, the Carrier contends, Patitucci was fully qualified on December 4, 2016, to perform the work.

The Carrier further contends that the Claimant was not presented first in the calling order because Patitucci ordinarily and customarily performed maintenance work at this location, while the Claimant ordinarily and customarily supported a project at a different location. Furthermore, the Carrier contends that pursuant to the Overtime Calling Intent issued on May 15, 1995, Patitucci was called under Step 1, Maintenance Electricians/Linemen, whereas the Claimant would not have been called until Step 2, Construction Electricians/Linemen in the work zone in seniority order.

Finally, the Carrier contends that the Organization’s requested remedy is excessive, and that if the claim were sustained, the Claimant would be entitled to compensation at no more than the regular rate.

A careful review of the record convinces this Board that the Organization has failed to prove a violation of Rule 55. Although the memorandum confirming Patitucci’s

qualification is dated after the claim date, the record clearly shows that as of November 21, the Carrier promoted him and began paying him as a Lineman, rather than a Lineman Trainee. Thus, the record amply demonstrates that on the claim date, Patitucci was fully qualified to perform Lineman work. Even as a Lineman Trainee, Patitucci had some rights under the Electric Traction Training Agreement, which permitted the Carrier to assign certain overtime work to him. Finally, Patitucci ordinarily and customarily performed maintenance lineman work on the disputed project, while the Claimant ordinarily and customarily performed construction lineman work on a different project.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of January 2020.