

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43909
Docket No. MW-45140
20-3-NRAB-00003-180677**

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 failed to assign Mr. J. Boothe to foreman overtime service performing snow duties on January 8, 2017 and instead assigned junior employee M. Willis (System File NEC-BMWE-SD-5543 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Boothe shall now be compensated for thirteen and one-half (13 .5) hours at his overtime rate of pay.”**

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 has established and holds seniority in various classifications within the Carrier's Maintenance of Way Department. At the time of this dispute, the Claimant was regularly assigned as a foreman to Gang S142. The Claimant's Northern District foreman seniority date is September 16, 2012.

The Carrier determined it was necessary to assign a foreman to perform overtime snow duty work at the Providence Maintenance of Way base on January 8, 2017. The Claimant's supervisor, Joseph Whelan, called the Claimant on January 7, 2017 at 8:30 AM on his Amtrak-provided cell phone for the January 8, 2017 overtime assignment to perform snow duty. This call to the Claimant went unanswered. Thereafter, the Carrier assigned employee M. Willis to perform the overtime snow duty work. Employee Willis' Northern District foreman seniority date is July 10, 2016.

The Organization filed this claim on January 12, 2017, asserting the Carrier utilized junior employee Willis to perform snow duty Foreman work on January 8, 2017 and requesting that the Claimant receive 13.5 hours compensation at the overtime rate. The Carrier denied the claim on March 7, 2017, asserting that the Claimant was called, but the call went unanswered. 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 improperly failed to assign the Claimant to perform overtime work, but instead assigned a junior employee to perform the disputed work, in violation of Rule 55. The Organization points out that Rule 55 provides that "preference for overtime service shall be given to the senior qualified, available employee who customarily and ordinarily performs such work."

The Organization contends that the on-property record demonstrates that the Claimant's supervisor failed to call the Claimant at the phone number that the Claimant had on record with the Carrier. The Organization contends that the supervisor's log shows only the Claimant's name, but not the number at which he was allegedly called. The Organization contends that the Claimant was qualified and available for overtime duty but was not afforded the opportunity to perform the disputed work.

The Carrier contends that Supervisor Whelan attempted to call the Claimant on his Carrier-provided cell phone, which the Claimant had advised was his preferred phone number to be contacted for overtime work. The Carrier contends that Supervisor Whelan called the Claimant on this preferred number, but the Claimant did not answer. The Carrier contends that the contact sheet listing a different number for the Claimant cannot prevail over Supervisor Whelan's testimony that the Claimant told him to use

the Carrier-provided number. The Carrier contends that the Organization cannot demonstrate that the Claimant was available for snow duty on January 8, 2017.

The Organization's claim relies upon assertions by the Claimant that his preferred contact number was the one listed on the contact sheet, but the Carrier's supervisor provided a statement that the Claimant indicated that he preferred to be contacted by the Carrier-provided number. As an appellate forum, this Board is not able to reconcile the inconsistent statements. Without this evidence, the Organization cannot demonstrate that the Claimant was available, but the Carrier failed to call him. Under such circumstances, the Board must find that the Organization has failed to satisfy its burden of proof, and the claim must be denied.

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.