

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43917
Docket No. MW-45311
20-3-NRAB-00003-190148**

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. T. Navalsky to perform overtime service on April 21 and 22, 2017 and instead assigned junior employee J. Flim, Jr. (System File NEC-BMWE-SD-5614 AMT).**
- (2) As a consequence of the Carrier's violation referred to in Part (1) above, Claimant T. Navalsky must now be compensated for twelve (12) hours at his time and one-half 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 as a trackman in the Carrier's service. At the time of this dispute, the Claimant was regularly assigned as a trackman and headquartered on the Adams Subdivision with a scheduled work week of Monday through Friday, 7:00 AM to 3:00 PM, with rest days of Saturday and Sunday.

On April 21, 2017, the Carrier learned that a broken block joint at the Morrisville Interlocking on the Adams Subdivision needed to be replaced. The broken block joint rendered the affected portions of track unusable, preventing any movement without requiring trains to detour around that track. Three different railroads run trains through Morrisville Interlocking and due to the high volume of traffic, the broken block joint caused major delays. The Carrier decided that the block joint had to be replaced immediately to allow for safe, normal operations.

The Carrier called Employee J. Flim, Jr., who has established and holds seniority as a trackman. At the time of this dispute, Flim was regularly assigned as a trackman and headquartered on the Adams Subdivision with a scheduled work week of Monday through Friday, 7:00 AM to 3:00 PM, with rest days of Saturday and Sunday. Flim responded to the call and on April 21 and 22, 2017, performed twelve hours of overtime work repairing the broken block joint.

There is no dispute between the parties that Flim was junior to the Claimant. The Carrier called Flim because his home of record placed him fifteen minutes closer to the repair than the Claimant's home of record, making Flim the closest qualified available employee.

The Organization filed a claim on June 7, 2017, asserting that the Carrier failed to assign the Claimant to perform the overtime work, although he was the senior available trackman and instead assigned junior employee Flim. The Carrier denied the appeal and the parties were unable to resolve the dispute on-property. Thus, the matter is properly before this Board for final adjudication.

The Organization contends that the Carrier was obligated to give the Claimant preference to perform the overtime service pursuant to Rule 55, which reads, in part:

“RULE 55 PREFERENCE FOR OVERTIME WORK

- (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.

* * *

- (c) When it is necessary to call employees for service in advance of their bulletined working hours, or after men have been released from work commenced during bulletined hours, the same preference will be given on rest days as on other days to employees who are qualified, available and ordinarily and customarily perform the work.”

The Organization contends that there is no dispute that Flim is the junior employe and, in accordance with Rule 55, the Carrier was obligated to give the the Claimant, who was regularly assigned and fully qualified, preference to perform the overtime service in question.

The Organization contends that that the Carrier has provided no evidence to support its affirmative defense of an emergency and, thus, the Carrier has failed its burden of proof on this defense and it completely fails as a result.

The Carrier contends that the unexpected broken block joint constituted a bona fide emergency. The Carrier contends that the broken block joint created a sudden inability to utilize the track safety, to access platforms, delays, safety hazards, and loss in customer satisfaction and revenues, necessitating immediate action.

The Carrier contends that it determined which employe to call based on distance to the repair. The Carrier contends that Flim’s home of record was fifteen minutes closer to the emergency than the Claimant’s, thereby justifying its decision to call Flim rather than the Claimant.

When the Carrier claimed that an emergency justified its decision to utilize the less-senior employe, it relied on the well-settled doctrine that in an emergency, the Carrier has greater latitude in assigning work. In Third Division Award 20527, the standard for an emergency is set forth:

“We have heretofore defined an emergency as “an unforeseen combination of circumstances which calls for immediate action” (Award 10965). . . . [I]t is well established that the Carrier, in an emergency, has broader latitude in assigning work than under normal circumstances; in an emergency Carrier may assign such employees as its judgment indicates are required and it is not compelled to follow normal Agreement procedures.”

The Carrier has met its burden to show that the broken block joint at the Interlocking was unforeseen and called for immediate action. The emergency gave the Carrier wide latitude to determine which employee to call to address the problem. It called Flim because his home of record put him closest to the emergency, which was not unreasonable under the circumstances.

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.