

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44512  
Docket No. 46107  
21-3-NRAB-00003-200302**

**The Third Division consisted of the regular members and in addition Referee Barbara C. Deinhardt when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(National Railroad Passenger Corporation (AMTRAK)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier assigned employee J. Wasch to perform overtime service at the 30th Street Station on September 10, 11, 12 and 13, 2018 instead of assigning Mr. J. Ciferni thereto (System File BMW-153660-TC AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Ciferni shall now receive forty (40) hours compensation at the 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 was working as a contractor protection B&B inspector at the 30th Street Philadelphia Station, Monday to Friday, 7 AM to 3 PM, at the time in question. The Carrier assigned J Wasch, a junior employee, to oversee lead paint removal that contractors were performing at the 30th Street Station on September 10, 11, 12 and 13 from 8 PM to 6 AM. Wasch's normal tour of duty is also Monday to Friday, 7 AM to 3 PM.**

**The Organization argues that Carrier violated the Agreement by not assigning the work to the Claimant, the senior qualified employee who was available on three of the four days.**

**The Carrier argues that the Claimant was not available. He was working overtime on the three days in question as a continuation of his regular duties. Also, the Carrier asserts that it may assign overtime to a junior employee when, as here, the work the junior employee is ordinarily doing, here, overseeing lead paint removal, must be continued during overtime hours. The Carrier also argues that if it is found to have violated the Agreement, the remedy is to pay the Claimant at the regular rate of pay, not the punitive overtime rate.**

**Upon a review of the record, the Board finds that the record does not support the Carrier's assertion that the Claimant was not available to perform the work on September 10, 12 and 13. However, we also find that precedent supports the Carrier position that the appropriate remedy is to pay the 30 hours lost at straight time, rather than at the penalty overtime rate.**

**We find that the Organization has met its burden of proving that the Carrier violated the Agreement when it did not assign the work to the Claimant on September 10, 12 and 13.**

**We therefore conclude that the Claim should be sustained in part.**

**AWARD**

Claim sustained in accordance with the Findings.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 29<sup>th</sup> day of July 2021.