

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44513
Docket No. 46108
21-3-NRAB-00003-200303**

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 ET employees outside of the Lancaster area to perform overtime service at Mount Joy on September 13, 20, 21, 27 and October 5, 2018 instead of assigning Mr. C. Davis thereto (System File BMW-153715-TC AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Davis shall now receive fifty (50) 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 regularly assigned and qualified as a lineman, Monday to Friday, 7 AM to 3 PM, at the time in question. The Carrier assigned various ET employees outside of the Lancaster area to perform overtime work at Mount Joy on September 13, 20, 21, 27 and October 5, 2018. There is no dispute that the Claimant holds superior seniority as an electric traction lineman over the employees assigned to this overtime service and that the Claimant was regularly assigned as an electric traction lineman during the time period involved.

The Organization argues that Carrier violated the Agreement by not assigning the work to the Claimant, the senior qualified, available employee.

The Carrier argues that the Claimant was a maintenance worker and the work in question was construction work. In addition, the Carrier argues that the Claimant was not available. Further, even if it is found to have violated the Agreement, the remedy is to pay for the missed work opportunity at the regular rate of pay, not the overtime rate.

Upon a review of the record, the Board finds that it was unrefuted in the record and in the Organization's briefs that the Claimant was a maintenance worker and the work in question was construction work. The Carrier therefore had no obligation to assign the work to the Claimant. In light of that conclusion, we need not reach the other arguments raised.

We find that the Organization has not met its burden of proving that Carrier violated the Agreement.

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 29th day of July 2021.