Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 44561
Docket No. MW-46250
22-3-NRAB-00003-200960

The Third Division consisted of the regular members and in addition Referee I. B. Helburn when award was rendered.

(Brotherhood of Maintenance of Way Employes 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 Carrier violated the Agreement when it failed and refused to properly compensate Mr. J. Ciferni for overtime service performed on Sunday, July 14, 2018 (System File BMWE-156889-TC AMT).

(2) The Carrier violated the Agreement when it failed and refused to properly compensate Mr. M. Wilson for overtime service performed on Sunday, July 14, 2018 (System File BMWE-156890-TC).

(3) As a consequence of the violation referred to in Part (1) above, Claimants J. Ciferni shall now be compensated '… four (4) hours of overtime at the rate of time and one-half.'

(4) As a consequence of the violation referred to in Part (2) above, Claimants M. Wilson shall now be compensated '… four (4) hours of overtime at his overtime rate of time and one-half.'"

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.

Claimants J. Ciferni and M. Wilson have established and hold seniority within the Carrier's Bridge and Building (B&B) Department. On Sunday, July 14, 2018 both Claimants reported for an expected eight (8) hour overtime assignment providing contractor protection. Because the contractor failed to appear, the Claimants were released and paid at the overtime rate for their four (4) hours of completed work. Because they were not paid for eight (8) hours, the Organization filed a claim on their behalf. The claim was properly processed on the property without resolution and thereafter progressed to this Board for final and binding adjudication.

The Organization insists that Rule 54-Protect Service on Holidays or on the Employee's Assigned Rest Day, was violated when the Carrier refused to pay the Claimants for the entire eight (8) hour tour. The dispute should be treated as *stare decisis* in light of the on-property Third Division Awards 26777 and 32226. Compensation must be at the overtime rate as specified in Rule 54.

The Carrier asserts that the Claimants were properly paid in accordance with Rule 53(a)-Calls, the applicable Rule, rather than Rule 54. "Protect Service is said to mean watching a train or a car because of the specific contents rather than contractor protection or flagging. See Presidential Emergency Board No. 222 and Third Division Award 4116. The earlier Pennsylvania Railroad Rule, the Pennsylvania Railroad being a predecessor of Amtrak, remains unchanged in the current Agreement and is mentioned in the Agreement with the Brotherhood of Locomotive Engineers and trainmen. If Rule 54 were to apply, there would be no need for Rule 53.

On-property Third Division Awards 26777 and 32226, the latter relying on the earlier award, were wrongfully decided and, in essence, overruled by on-property Third Division Award 30188. See also Third Division Award 36680 and First Division Award 28175 that support the proposition that a "palpably wrong" award should not be followed. Not only has the Organization failed to meet its burden of proof, but also it has requested an inappropriate remedy given the on-property precedent that missed

work opportunities should be compensated at the applicable standard rate if such claims are sustained.

Rule 53(a) states that: "Employees notified or called to perform service outside of and not continuous with the regularly assigned working hours shall report for duty with reasonable promptness and shall be paid a minimum of two hours and forty minutes at the rate of time and one-half, if held on duty longer than two hours and forty minutes, they shall be paid at the rate of time and one-half on the actual minute basis."

Rule 54 states: "Employees required to report for "Protect Service" on holidays, or on Sundays, when Sunday is an assigned rest day, shall be allowed a minimum of eight (8) hours at the rate of time and one-half."

The facts in this case are not in dispute and the question before this Board is clear: Is Rule 53(a) or Rule 54 the applicable Rule? For two primary reasons, we find that Rule 53(a) is applicable. In Third Division Award 30188 that Board found the term "protect service" as used in Rule 54 to be ambiguous and, in so many words, added that the ambiguity had to be resolved and clarified by considering the context in which the phrase was used. That Board concluded that "If the parties wanted to have Rule 54 apply to the generalized concept of protection,' they could have said so. Instead, they used a phrase that that evidently had been coined to note something in particular." While the Board in Award 30188 found that "protect" did not apply to the deenergizing of overhead wires," this Board focuses on a more general point that arises from the earlier decision—that Rule 53(a) and Rule 54 have different meanings and different applications. This is clear from the history of the term that is found in the current record. The Organization has not taken issue with that history, relying only on the language of Awards 2677 and 32226.

The above analysis leads directly to the second reason for the Finding that Rule 53(a) is the applicable Rule. Contract language arises from the needs of one or both of the parties and addresses working conditions of concern. It is assumed that the parties intend for different Rules to speak to different elements affecting the workplace so that different Rules have different meanings. Including duplicate Rules in an Agreement would serve no useful purpose. For this reason, the Carrier's contention that the application of Rule 54 would eliminate the need for Rule 53(a) is compelling. The contention is consistent with the teaching of Award 30188 that the two Rules have different meanings and different applications, even if that Board was not prepared "to say exactly what Rule 54 covers." The current Board finds that Rule 54 is not

intended to cover all call-outs when it is known in advance that the assignment will involve contractor protection rather than availability in case protection is needed.

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 8th day of October 2021.