

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44603
Docket No. SG-46045
22-3-NRAB-00003-200749**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)**

STATEMENT OF CLAIM:

“Claim on behalf of M.S. Danko, for 1.5 hours at his overtime rate; account Carrier violated the current Signalmen’s Agreement, particularly Rules 20, 32, and Appendices B-3 and B-4 when on October 31, 2018, Carrier utilized an Electronic Technician, to perform the recognized maintenance work of gathering equipment, installing pipe, and trenching at the Morrisville Training Yard, without following the call list, thereby causing the Claimant a loss of work opportunity. Carrier's File No. BRS-156048-TC. General Chairman's File No. AEGC-20194. BRS File Case No. 16165-NRPC(S). NMB Code No. 172.”

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 assigned to the position of C&S Maintainer on Gang Q102.

On October 31, 2018, the Carrier assigned Electronic Technician Kelvy to perform to install pipe for future cables, and assist the trench dig at Morrisville Training Yard.

By letter dated December 20, 2018, the Organization presented a claim to the Carrier which was denied by letter dated January 18, 2019. 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's improper assignment of Kelvey to perform maintenance work at Morrisville Training Yard violated Rules 20 and 32 of the parties' Agreement, as the Claimant was the senior, qualified employee and was available to perform the work. The Organization contends that there is no dispute that the Claimant was the senior, qualified employee.

Rule 20(i) of the parties' Agreement provides,

RULE 20 – WORK WEEK

- (i) Where work is required by the Company to be performed on a day which is not a part of any assignment, it may be performed by an available unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases, by the regular employee (See Appendix B-4 or B-5, as applicable).

The Organization contends that the Carrier has failed to present substantial evidence to support its affirmative defense that it called the Claimant, but he turned down the work. The Organization contends that the Carrier should submit its call log to support its assertion that the Claimant was called for the overtime work.

Finally, the Organization contends that it seeks a proper remedy. The Claimant missed an overtime opportunity, so he should be compensated at the overtime rate, in order to make him whole for the violation. The Organization contends that the facts considered in Awards holding otherwise are easily distinguished from the facts in this case.

The Carrier contends that the Claimant was the senior qualified employee, but he turned down the work when it was offered to him. The Carrier contends that it provided a statement that the Claimant was called and no contrary evidence was

presented. The Claimant did not deny that he was called. The Carrier contends that this Board is not in a position to resolve this dispute in fact, so the claim must be denied.

The Carrier contends that the call logs are irrelevant to this dispute as they only show who was called out to respond to a trouble call. Here the overtime was predetermined and calls were made the night before.

With respect to the remedy, the Carrier contends that the Organization's request for payment at the overtime rate is inappropriate and excessive. It is well-established that the appropriate payment for missed overtime opportunities on this property is at the straight time rate. The Carrier contends that the overtime rate is only provided to compensate an employee who has worked beyond his contractually required hours.

A careful review of the record demonstrates that the Claimant was the senior, qualified, and regularly assigned employee. There is no dispute that under the provisions of Rule 20, he was to have the first opportunity to be assigned to the overtime work. However, from the first denial, the Carrier asserted that the Claimant was not available. It presented evidence that the Claimant was called but turned down the opportunity to work, which was never refuted by the Organization or the Claimant. At best, there was an irreconcilable dispute in fact that this Board does not have authority to resolve.

Although the Claimant was the senior, qualified employee, the Organization has failed to demonstrate that he was available for the overtime assignment in question. Therefore, it has not shown all the necessary elements to sustain the claim.

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 October 2021.