

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44682
Docket No. MW-45749
22-3-NRAB-00003-190642**

**The Third Division consisted of the regular members and in addition Referee
Pilar Vaile when award was rendered.**

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

PARTIES TO DISPUTE: (
(Keolis Commuter Services, LLC

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned employee D. Haskins to perform overtime service installing a temporary handicap lift on the East Route Main Line near Mile Post 27.6 at Ipswich Station on April 30, 2018 instead of assigning Mr. G. Haberland thereto (Carrier's File BMW 10/2018 KLS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant G. Haberland shall now be compensated for five (5) overtime hours at the applicable 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.

Claimant G. Haberland has established and holds seniority in the Bridge and Building (B&B) Sub-Department within the Carrier's Maintenance of Way Department. On the dates giving rise to this dispute, he was assigned and working as a B&B Foreman.

On April 30, 2018, the Carrier assigned employee D. Haskins to perform overtime work installing a temporary handicap lift on the East Route Main Line near Mile Post 27.6 at Ipswich Station, instead of the Claimant.

The Organization timely filed a claim under the Railway Labor Act, 45 USC §§ 151, *et seq.*, which was denied on the property and timely referred with or without an agreed upon extension to the National Railroad Adjustment Board for final adjudication.

The Organization argues that this work should have instead been assigned to Foreman Haberland because it is undisputed that the Claimant was the senior available qualified employee at the Headquarters; and that he has ordinarily and customarily performed work of this very nature on the territory involved, including at this location the prior year. The Organization further argues that the Carrier fails to prove its affirmative defense of having allegedly restructured B&B employees' territory routes, because "the record is void of any evidence to show that any changes were made to the Claimant's territory since the previous year without exception from the Carrier." By failing to assign Claimant Haberland the work, therefore, the Carrier violated Rules 5 and 11, because it denied the Claimant overtime opportunities, and also denied him the benefit of his valuable property right of seniority.

The Carrier agrees that Mr. Haskins was offered the overtime work at Ipswich Station on April 30, 2018 before Claimant, but argues that this was required under "[t]he longstanding procedure" by which "the Carrier first offers the work to qualified employees within the established work territory subdivision by rank and seniority", and only thereafter to "qualified employees on the overtime list by seniority." Moreover, the Carrier represents that in 2018, it made changes to the territories to which employees were assigned to work, and that "[t]his was well within its rights to do and the Organization has not contested that action." Because of this change, the Carrier maintains that Mr. Haberland "was no longer assigned to the territory subdivision that covers Ipswich Station and instead was assigned to the Lower East Route territory...Mr. Haskins, however, is assigned to the territory subdivision that covers Ipswich Station."

There was some ambiguity in the on-property record as to whether the Carrier's decision was based in part on a CDL requirement (which it is unrefuted the Claimant met), and whether the work was first offered to a different mechanic within the Claimant's territory. There is also considerable ambiguity as to whether, when, and how territories and/or territorial assignments were amended in 2018, and what effect that would have on the application of Rule 11.

In this regard, the Board notes that the plain language of Rule 11.4(b) only references Headquarters not territories, as the Organization has argued, although the Carrier's right to determine qualifications for overtime is undisputed. *See, e.g.,* PLB No. 7007, Case No. 36, *BMEW and Mass. Bay Commuter Railroad* at 3 (Meyers 2011) ("[i]t is fundamental that the Carrier has the right to set the job skill requirements when it assigns work to employees", and that "[t]he carrier has the right to determine who is qualified to perform the job"); *but see BMEW and Union Pacific Railroad* (Zusman 1988) (Organization's allegations regarding qualifications stand as fact where unrefuted).

However, the Board does not get to any of these issues under the current procedural posture and on-property record. Upon review of the whole record developed on-property, the Board determines that the Organization failed to establish the employees' assigned Headquarters. As such, there was no basis in the record upon which the Board can further consider the Organization's arguments.

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 2022.