

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44684  
Docket No. MW- 45751  
22-3-NRAB-00003-190644**

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

**PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -  
(IBT Rail Conference  
(  
(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 junior employee S. Tolson to perform overtime service working in conjunction with a hit platform on the Fitchburg Line at the N. Leominster Station on June 11, 2018 instead of assigning Mr. R. Shanley thereto (Carrier's File BMW 13/2018 KLS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Shanley 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 R. Shanley has established and holds seniority within the Carrier's Maintenance of Way Department. On the dates giving rise to this dispute, he was assigned and working as a Bridge and Building (B&B) mechanic, with a seniority date of January 28, 1988. Employee S. Tolson has also established and holds seniority within the Carrier's Maintenance of Way Department and was working as a B&B mechanic, with a seniority date of November 28, 2016.

On June 11, 2018, the Carrier assigned Tolson, to perform overtime B&B mechanic duties on a HIT platform instead of assigning Claimant, who held superior seniority as a B&B mechanic.

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 Claimant Shanley because it is undisputed that the Claimant was qualified, available, and has ordinarily and customarily performed work of this very nature on the territory involved. The Organization further argues that "the Carrier failed to point out any Agreement language to support" its contention about changing territory routes; and failed to prove its affirmative defense of alleged restructuring of the territory routes, since "the record is void of any evidence to show that any changes were made to the Claimant's territory, other than a vague assertion by the Carrier's labor relations representative." 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. Tolson was offered the overtime work at North Leominster Station on June 11, 2018 before Claimant, but argues that assignment of overtime first by territory was required under the Parties' "longstanding procedure" for assigning overtime, under which – consistent with Rule 11(4) – "the Carrier first offers the work to qualified employees within the established work territory subdivision by rank and seniority." Then, "[i]f no employee within the territory subdivision agrees to perform the work, the work is then offered to qualified employees on the overtime list by seniority."

Moreover, the Carrier alleges that in 2018, it "made changes to the territories to which employees were assigned to work", and that it is its exclusive prerogative to

make territorial changes. Because of these changes, the Claimant “was no longer assigned to the territory subdivision that covers North Leominster Station, while Mr. Tolson, however, is assigned to the territory subdivision that covers North Leominster Station. Accordingly, when it came time to assign overtime, Claimant was not within the initial pool of employees offered the overtime work, whereas Mr. Tolson was.”

There was some ambiguity in the record below as to whether, when, and how territories and/or territorial assignments were amended in 2018; and the Board notes that the plain language of Rule 11.4(b) only references Headquarters, not territories. However, the Carrier’s right to determine the qualifications for overtime is undisputed and it could be that it fairly deems territory a qualification. *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).

Nonetheless, the Board does not get to the merits of the case 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 affected 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 28<sup>th</sup> day of January 2022.