

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 44686
Docket No. MW-45754
22-3-NRAB-00003-190658

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 multiple members of the Tie Crew to perform overtime service to complete distribution work in locations, including but not limited to Mile Posts 44 through 49, on April 7, May 5 and 6, 2018 instead of assigning Messrs. S. Monahan, J. Velez, R. Burke, J. Belmont and B. Post thereto (Carrier's File BMWWE 11/2018 KLS).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants S. Monahan, J. Velez, R. Burke, J. Belmont and B. Post shall now ‘... be compensated thirty (30) hours of their appropriate time and one-half rates of pay as well as all credits for vacation and all other benefits for the dates claimed for their missed work opportunity.”

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 S. Monahan, J. Velez, R. Burke, J. Belmont and B. Post have established and hold Track Sub-Department seniority within the Carrier's Maintenance of Way Department. On the dates giving rise to this dispute, they were assigned to various positions on the Fitchburg Maintenance Crew.

On April 7, May 5 and 6, 2018, the Carrier assigned multiple members of the Tie Crew to perform overtime service to complete limited distribution work on the Grand Junction Line territory, including at Mile Posts 44 through 49. This work was performed in conjunction with the Tie Crew's tie work, including using cherry pickers and preparing the sites for tie installation. At the time, there was not a Distribution Crew available in the area and the on-property hearing Officer found and concluded that such incidental distribution work is ordinarily and customarily performed by the Tie Crew under those circumstances.

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 the Claimants because there is no dispute that they have ordinarily and customarily performed distribution work as the Fitchburg Maintenance Crew designated to the territory where the claimed work occurred. As a result, the Carrier denied the Claimant overtime opportunities for which they were qualified within their territory, and also denied them the benefit of his valuable property right of seniority.

The Carrier, in contrast, argues that it was not required under the Contract to assign this limited distribution work to a separate maintenance crew just because there was not a distribution crew working with a tie crew. It further argues that the Organization is seeking an improper windfall because each of the Claimants was offered overtime work on the dates cited by the Organization, and each turned down that opportunity.

Upon review of the whole record, the Board determines that the Organization failed to offer any actual evidence, such as employee statements, that the affected employees ordinarily and customarily performed the work at issue. As the Parties well know, the Party with the burden of proof may not rely on mere assertions. Absent such evidence, there is no basis for the Board to review the matter further in its limited capacity as an appellate body. *See, e.g., SBA No. 934, Award No. 581, IBEW and Metro-North Commuter Railroad (Capone 2015)* (“mere assertions do not suffice to sustain” a position and “[r]eliable and sufficient evidence must be contained in the record for a plea to succeed).

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.