

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44687
Docket No. MW-45755
22-3-NRAB-00003-190659**

**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 junior employees J. Veroneau, K. Koshinsky, G. Jacobs as well as other junior employees to perform overtime service completing bridge work on the Charles River Bridge at Mile Post 0.33 on the Grand Junction Line on various dates between May 28 and June 9, 2018 instead of assigning Messrs. P. George, G. Koslouski and D. Dennis thereto (Carrier's File BMW 15/2018 KLS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants P. George, G. Koslouski and D. Dennis shall now ‘... be compensated ninety-three (93) hours of their respective time and one-half rates of pay, all per diem, as well as all credits for vacation and all other benefits for the dates claimed for the 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 P. George, G. Koslouski and D. Dennis have established and hold 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, they were assigned as B&B mechanics out of the Wilmington headquarters, and they are (or are part of) a Per Diem Crew.

On various dates between May 28 and June 9, 2018, the Carrier assigned allegedly junior employees J. Veroneau, K. Koshinsky, G. Jacobs and others to perform overtime service completing bridge work on the Charles River Bridge at Mile Post 0.33 on the Grand Junction Line.

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 the Claimants because it is undisputed that they maintained superior seniority; they were qualified and available to perform the claimed work; the Per Diem Crew ordinarily and customarily performed work of this nature at this location; and/or that any vacancies should have been filled using the seniority roster, while "Grand Junction" is not a listed Headquarters. The Organization further argues that by failing to assign Claimants this overtime work, the Carrier violated Rules 5 and 11, because it denied the Claimants overtime opportunities, and also denied them the benefit of their valuable property right of seniority.

This case is very similar to the one presented in Case Nos. NRAB 3-190642 and 3-19644, heard by the Board on the same day. It also turns in large part on the application of seniority by territory, rather than by Headquarters as appears to be required under the plain language of Rule 11.4(b). As in those cases, there are some ambiguities presented.

However, upon review of the whole record, the Board determines that the Organization failed to allege or establish the affected employees' assigned headquarters. As such, there is 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.