

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44958  
Docket No. MW-46742  
23-3-NRAB-00003-210691**

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

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

**PARTIES TO DISPUTE: (**

**(National Railroad Passenger Corporation (AMTRAK)  
(-Northeast Corridor**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier assigned junior employees H. Sharif and J. Carroll to perform overtime foreman duties in connection with the MDZ Surfacing Unit at various locations within the MidAtlantic Division on September 30, 2019 and October 1, 2, 3, 7, 8, 9, 10, 14, 15, 16, 17, 21, 22, 23, 24, 28, 29, 30 and 31, 2019 and continuing instead of assigning senior Foreman R. Garrett thereto (System File BMWE-158146-TC AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Garrett shall now:**

**“\*\*\*receive compensation for the two hundred (200) hours overtime earned by the junior employees as referenced herein, and payable at the Claimant’s respective Track Foreman rate. These are earnings Claimant would have received had he been properly called out and assigned.**

**This claim is herein presented, as defined in Rule 64(e) on a “continuing” basis, in addition to the 20 (sic) hours listed herein.”**

**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 has established and maintains seniority in the Carrier's Maintenance of Way Department. The Claimant entered the Carrier's service on June 6, 1980. The Claimant's track foreman seniority date is March 12, 1984 and the Claimant's NEC MDZ UNIT prior rights foreman seniority date is December 7, 1992. The Claimant's primary duty is providing RWP protection for a daylight maintenance gang that performs repairs to Roadway Equipment.

On the dates giving rise to this the dispute, the Claimant was assigned and working as a track foreman in Gang Y-072 with various headquarters with a tour of duty from 6:00 AM until 4:30 PM, with regular assigned days of Monday through Thursday with rest days of Friday, Saturday and Sunday.

On September 30, 2019 and October 1, 2, 3, 7, 8, 9, 10, 14, 15, 16, 17, 2019, and continuing, the Carrier assigned H. Sharif to perform overtime foreman duties in connection with the MDZ Surfacing Unit at various locations within the MidAtlantic Division. Employee Sharif entered the Carrier's service on April 21, 2008, and has a track foreman seniority date of March 7, 2011. Employee Sharif was assigned as a Roadway Worker in charge (RWTC) Foreman in Gang Y-172 with various headquarters with a tour of duty from 6:00 A.M. until 4:30 P.M, with regular assigned days of Monday through Thursday with rest days of Friday, Saturday and Sunday.

On October 21, 22, 23, 24, 28, 29, 30 and 31, 2019, the Carrier assigned J. Carroll to perform overtime foreman duties in connection with the MDZ Surfacing Unit at various locations within the MidAtlantic Division. Employee Carroll entered the Carrier's service on October 27, 2003 and has a Track Foreman seniority date of July

1, 2012. Employee Carroll is assigned to Gang Y-222 with various headquarters with a TOD of 6 AM to 4:30 PM, Monday through Thursday and rest days of Friday, Saturday, and Sunday.

The overtime worked by Employees Carroll and Sharif was work filling a vacant foreman position on Gang Y062, a night gang that also performs surfacing from 8 PM to 6 AM.

The Agreement between the Carrier and the Organization provides, in part:

**RULE 55 PREFERENCE FOR OVERTIME WORK**

- (a) Employees will, if qualified and available, be given preference for overtime work, including calls, on work ordinarily and customarily performed by them, in order of their seniority.

**RULE 89 NORTHEAST UNITS**

\* \* \*

- I. Except for Technician and Trackman rosters, all Rule 89 Rosters are frozen effective January 1, 1995. Technician rosters remain active. All Rule 89 Trackman rosters are eliminated. Employees on the frozen rosters have prior rights to positions in the class in the unit covered by the respective rosters. Employees who are awarded positions in Rule 89 gangs who do not have seniority in that class in their home seniority district, will establish seniority in that class on their home seniority district.

In a letter dated November 19, 2019, the Organization filed a claim on behalf of the Claimant. The Carrier denied the claim in a letter dated January 13, 2020. Following discussion of this dispute in conference, the positions of the parties remained unchanged, and this dispute is now properly before the Board for adjudication.

The Organization contends that the Carrier has failed to comply with the seniority provisions of the Agreement. The Organization contends that the Carrier failed to assign the Claimant to perform overtime work, specifically, foreman duties in connection with the MDZ Surfacing Unit at various locations within the MidAtlantic Division on the cited claim dates. Instead of assigning the Claimant, who was senior, available, and willing to perform the disputed overtime service, the Carrier improperly assigned junior employees H. Sharif and J. Carroll.

The Organization contends that Rule 55 of the Agreement provides that preference for overtime service, including on rest days, shall be given to the senior, qualified, available employee who customarily and ordinarily performs such work. In addition, there is no dispute that the Claimant maintained MDZ UNIT prior rights seniority, in accordance with Rule 89(I) of the Agreement. *See*, Third Division Awards 26508, 26690, 30448, 38191, 38192 and 38212. The Organization contends that the Carrier's failure to comply with Rule 55 caused the Claimant a loss of work opportunity as well as the loss of monetary benefits.

There is no dispute that the work occurred as claimed and the Claimant provided a statement that he was ready, willing, and able to perform the overtime work. The Organization contends that the Carrier has a long history of allowing the Claimant to work overtime prior to his assigned shift, then sending him home early during his regular assigned workday, and paying him for time not worked. Thus, the Organization contends that it has proven its *prima facie* case.

The Carrier contends that the Organization is seeking an award that would require the Carrier to offer overnight assignment to the Claimant and then pay the Claimant not to work his regular daytime shift. The Carrier contends that the Board has already determined that the Carrier is not required to follow that practice. Third Division Award 43625.

The Carrier contends that the Claimant was the Foreman of a Gang that provided maintenance repairs for Gang Y072 during the daytime shift. Had he received the overtime he is seeking, he would have also acted as the Foreman for Gang Y062 during its operations on overnight shift. Working the overtime at issue would have prevented the Claimant from being available for his regular assignment, which would prevent the maintenance crew from completing their work.

The Carrier contends that the Organization has failed to prove that the overtime work being claimed was work that the Claimant ordinarily and customarily performed. The claimed-against employees were members of gangs who normally performed the work of surfacing. The Carrier contends that it is under no obligation to call a senior employee from another gang to perform overtime work when employees in the gangs who regularly perform the work are available for service. Seniority is not the only consideration when assigning overtime. Rule 55 states, "Employees will, if qualified and available, be given preference for overtime work, including calls, on work ordinarily and customarily performed by them, in order of their seniority." In this case, the Claimant had no right to the overtime as he was assigned to another gang that

performed equipment maintenance and was not an employee who regularly performed the claimed work, surfacing.

There is no dispute that the disputed overtime was performed, and that the Claimant was more senior than the employees who were assigned the overtime on September 30, and October 1, 2, 3, 7, 8, 9, 10, 14, 15, 16, 17, 21, 22, 23, 24, 28, 29, 30 and 31, 2019. However, Rule 55 gives preference for overtime work to employees who ordinarily and customarily perform the work. Here, the Carrier has asserted that the work of surfacing was not ordinarily and customarily performed by the Claimant, as he is assigned to a gang that performed equipment maintenance. Conversely, the junior employees who were assigned the overtime work did ordinarily and customarily perform the surfacing work that was claimed.

**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 24<sup>th</sup> day of May 2023.