

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44963
Docket No. MW-46815
23-3-NRAB-00003-210770**

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 Carrier violated the Agreement when it failed to assign Mr. G. Morgan to perform overtime work, on January 3, 4, 18, 30 and 31, 2020, performing welding of rail joints in the Mid Atlantic Division (System File BMW-158543-TC AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant G. Morgan shall now receive compensation for fifty-two (52) hours of overtime at his respective 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.

The Claimant has established and maintains seniority in the Carrier's Maintenance of Way and Structures Department. On the dates giving rise to the instant dispute, the Claimant was assigned and working as a welder (Boutet/Thermite) on Southern District Welding Unit Gang MAST-Z02, which had a regular tour of duty of 8:00 PM to 6:30 AM Monday through Thursday and rest days of Friday, Saturday, and Sunday.

The Carrier presented a statement that the welders from the Southern District, including the Claimant, were asked to work the overtime, but none accepted the work. The Claimant denied that he was offered the overtime work.

On January 3, 4, 18, 30 and 31, 2020, the Carrier assigned employees J. Blankenship and P. Kavanaugh to overtime welding duties involving rail joints in the Mid Atlantic Division, rather than the Claimant, who was regularly assigned as a welder. At the time of this dispute, employee Blankenship was regularly assigned to an Engineer Work Equipment (EWE) "B" Speed Swing Operator position on Track Maintenance Gang BALT-M02 and employee P. Kavanaugh was regularly assigned as an Engineer Work Equipment Operator ("EWE") "B" (Speed Swing) in Track Maintenance Gang BALT-M02.

In a letter dated March 2, 2020, the Organization filed a claim on behalf of the Claimant. The Carrier denied the claim in a letter dated April 30, 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.

Rule 55 of the parties' Agreement reads,

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.

The Organization contends that the Carrier violated Rule 55 of the parties' Agreement when it assigned employees Blankenship and Kavanaugh, who were not regularly assigned as welders, to the claimed overtime work, rather than the Claimant who is regularly assigned as a welder. The Organization contends that there is no dispute that Blankenship and Kavanaugh do not ordinarily and customarily perform welding duties as part of their regular assignments. The Organization further contends that the Claimant was available, willing, able, and fully qualified to perform the disputed overtime service. In this instance, there is no dispute that the subject overtime

work was welding work or that the Claimant was regularly assigned and working as a welder on the dates in question and customarily and ordinarily performs work of the character involved here.

The Organization contends that the record reveals that the Carrier made no attempt to contact the Claimant to assign him to the overtime work in dispute. The Claimant was fully qualified and available to perform the claimed overtime work.

The Carrier contends that the Organization has failed to present a *prima facie* case that the Agreement was violated. The Carrier contends that the overtime work that arose was track maintenance in the Mid-Atlantic Division, which included some welding. The Carrier contends that it properly utilized Employes Blankenship and Kavanaugh for the overtime for which they were qualified and available. The overtime was track maintenance work, which they ordinarily and customarily perform because they are in track maintenance gangs. There is no prohibition against using track maintenance employees for welding.

The Carrier contends that arbitral precedent explains that the Rule 55(a) term “on work ordinarily and customarily performed by them” need not refer to a specific task such as welding but can also refer to the overall purpose of the work.

The Carrier contends that it first asked the welders in the Southern District Welding Gang, including the Claimant, to work the overtime, but they declined. The Carrier contends that Employes Blankenship and Kavanaugh accepted and worked the overtime. The Organization offered no further proof to support its position regarding these contradictory statements. Thus, the Carrier contends, there is a dispute of fact.

The Carrier contends that on January 30, 2020, Employee Blankenship also worked overtime when another employee failed to show up for their regular tour of duty. This shift occurred during the Claimant’s regular tour of duty, rendering him unavailable for the overtime. The Organization withdrew the claim for this date.

The dispute before the Board concerns the parties’ intent when using the phrase “work ordinarily and customarily performed by them.” The Organization argues that the work in question is welding, so the Carrier was obligated to assign the work to a welder. The Carrier responds that the work was track maintenance work with some incidental welding, and thus, the employees who ordinarily and customarily perform track maintenance work were properly assigned.

In Third Division Award 32154 (an on-property award), the Board wrote,

Rule 55 clearly recognizes that different individuals within a class will ordinarily and customarily perform different work. Otherwise the authors of the rule could simply have provide[d] preference overtime work for “work of the classification”. Rule 55 allows, indeed requires, [the Carrier] to make distinction between individuals within a class where such distinctions are appropriate.

The Board also quoted from on-property Third Division Award 30685:

The phrase, “work ordinarily and customarily performed” is not precise. It can refer to the type of work, which would clearly encompass the Claimants herein. Alternately, it can be interpreted to refer to the continuation or completion of such work.

The Carrier presented evidence that the disputed work was track maintenance work, which was work ordinarily and customarily performed by the assigned employees. The Claimant was assigned to a welding gang; he did not ordinarily and customarily perform track maintenance work. Thus, the Organization has not shown that the Carrier violated the Agreement when it assigned Employees Blankenship and Kavanaugh in lieu of the Claimant to the disputed overtime work.

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 24th day of May 2023.