

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45017  
Docket No. MW-47327  
23-3-NRAB-00003-220270**

**The Third Division consisted of the regular members and in addition Referee Rachel Goedken 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 called out and assigned junior employee J. Salguero-Monroy to perform overtime operating a grapple truck, for which service he was not qualified, at Hook Interlocking (Mile Post 16.8) on the Carrier’s Philadelphia to Washington Line in Marcus Hook, Pennsylvania on June 9, 2020 instead of assigning senior, qualified EWE P. Cramer, who ordinarily and customarily performed the work in question, thereto.**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant P. Cramer shall now “\*\*\* receive compensation for the six (6) hours overtime earned by J.C. Salguero-Monroy as referenced herein, and payable at the Claimant’s respective rate. \*\*\*”**

**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.**

**At the time this dispute arose, the Claimant was an Engineer Work Equipment (EWE) Operator "A" assigned to the WM40 Port Crane/Trans Wagon with a job seniority date of April 8, 2013. The Claimant was hired on June 9, 2008. At the time of the missed overtime assignment, the Claimant was assigned to gang Y802, which has a tour of duty of 6 AM to 4:30 PM Monday through Thursday and rest days of Friday, Saturday, and Sunday. Gang Y802's headquarters was listed as "Variable, Wilmington DE".**

**Juan Salguero-Monroy is an EWE Operator "C" assigned to the Grapple Truck with a job seniority date of May 21, 2017. Mr. Salguero-Monroy was hired on July 13, 2015. In June 2020, Mr. Salguero-Monroy was assigned to gang Y812 which has a tour of duty of 6 AM to 4:30 PM Monday through Thursday and rest days of Friday, Saturday, and Sunday.**

**On Tuesday, June 9, 2020, Mr. Salguero-Monroy worked six hours of overtime at the Hook Interlocking (Mile Post 16.8) on the Carrier's Philadelphia to Washington Line in Marcus Hook, Pennsylvania. The Claimant contends that he should have been awarded the overtime as he was qualified, available, and senior to the employee who worked the overtime.**

**The initial claim was postmarked June 20, 2020. The claim was denied on July 30, 2020. The Organization appealed to Labor Relations on October 28, 2020, and this was denied on December 29, 2020. The Organization's third-level appeal was dated February 24, 2021, and received on March 2, 2021. The Carrier's third-level denial was issued on June 9, 2021. The parties were unable to resolve the claim on-property, so it now comes before this Board for final adjudication.**

**The Organization contends that the Claimant was denied the overtime opportunity in violation of Rule 55, which provides:**

**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.

...

- (c) When it is necessary to call employees for service in advance of their bulletined working hours, or after men have been released from work commenced during bulletined hours, the same preference will be given on rest days as on other days to employees who are qualified, available and ordinarily and customarily perform the work.

In support of its position that the Claimant was denied the overtime shift worked by the junior employee, the Organization provided two emails, one from the Claimant and one from the Claimant's foreman. The emails indicate that the Claimant told his foreman and supervisor that the Claimant wanted to work the overtime shift but that the supervisor informed them that the Claimant could not.

The Carrier maintains that all EWE, including the Claimant, were offered the overtime opportunity, but the Claimant made himself unavailable by not showing up for the overtime shift. In support of its position, the Carrier provided an email from the Claimant's supervisor, stating that when the Switch Exchange System (SES) Unit has scheduled overtime, either the supervisor or his foreman go through the list at the morning job briefing. The supervisor writes that this has been his routine for many years.

The Organization bears the burden of proving a violation of the Agreement. The Board's review of the record shows that the Organization has done so. The Organization provided two emails supporting the Claimant's assertion that he expressed interest in working overtime but was denied the opportunity by the supervisor. The supervisor's email does not refute or deny those assertions, such that there are disputed facts. Rather, the email offers a general description of how overtime is offered, which is insufficient to overcome the Claimant's and foreman's assertions that the supervisor denied the Claimant the overtime opportunity.

Turning then to remedy, the Claimant seeks six hours at the overtime rate for the Rule 55 violation. The Organization provided arbitral authority in support of its request for payment at time and one-half. The Carrier submitted authority

supporting payment at straight time. Public Law Board 4549 in Award No. 1 addressed this question specifically and found that it was well settled that straight time is the appropriate pay rate for missed overtime opportunities. Accordingly, the Claimant will receive straight time rate for the missed overtime on June 9, 2020.

**AWARD**

Claim sustained.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

Dated at Chicago, Illinois, this 3<sup>rd</sup> day of August 2023.