

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45018  
Docket No. MW-47370  
23-3-NRAB-00003-220300**

**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 Sub-Division Gang A-352 Foreman (track inspector) D. Brown to perform overtime directing and working with welders to thermite weld rail at Mile Post 35.1 on the Carrier’s Philadelphia to Washington Line in Cecil County, Maryland from 8:00 P.M. on Tuesday, June 9, 2020, until 6:00 A.M. on Wednesday, June 10, 2020, instead of assigning Gang MAST-Z01 Foreman J. Dolly, who ordinarily and customarily performed the work in question and was the senior employee, thereto.**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Dolly shall now ‘\*\*\* receive compensation for the ten (10) hours overtime earned by D.K. Brown 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 a foreman in production gang MAST-Z01 with variable headquarters with a tour of duty from 6:00 AM to 4:30 PM, Monday through Thursday. He was hired on January 3, 2011 and has a job seniority date of December 14, 2014.**

**Employee D. Brown, the foreman who was assigned the overtime, was assigned to track inspection gang A532 with headquarters in Perryville, MD and had a tour of duty of 7:00 AM to 3:30 PM Monday through Friday. He was hired on August 1, 2011 and has a job seniority date of November 19, 2014.**

**The overtime work began at 8:00 P.M. on Tuesday, June 9, 2020, and ended 6:00 AM on Wednesday, June 10, 2020. Employee Brown was called and earned ten (10) hours' overtime for this assignment. The Claimant was not called.**

**The Organization presented a claim by letter dated July 7, 2020. The Carrier denied the Organization's claim by letter dated September 4, 2020. Thereafter the parties continued to handle the dispute in the customary and usual manner, including conferencing the claim on April 22, 2020, as confirmed by the Carrier's letter dated September 13, 2021. The parties were unable to resolve the claim on-property, so it is now properly before this Board for final adjudication.**

**The Organization claims that the assignment of D. Brown violated 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.**

**The overtime assignment at issue was a thermite welder foreman. The parties disagree as to who ordinarily and customarily performs the work.**

**The Organization maintains that there was no thermite welder position in any gang in the Perryville Subdivision Track department at the time of the overtime assignment. The Organization provided documentation showing that on August 22, 2019, the Carrier abolished welding gang A-267 from the Perryville subdivision and advertised welding gangs under Rule 90-A as gang MAST-Z02 with an effective starting date of August 14, 2019. From August 14, 2019, to August 2, 2020, thermite welding positions were assigned to gang MAST-Z02. On August 2, 2020, the Carrier abolished gang MAST-Z02 and assigned the work back to the Perryville Subdivision Track department effective August 3, 2020. Accordingly, the Organization argues that at the time of the overtime assignment on June 9-10, 2020, Perryville Subdivision Track employees were not performing thermite welding.**

**The Carrier asserts that the overtime work in question was with a Perryville Subdivision welding team and, therefore, was work ordinarily and customarily performed by the foreman who was headquartered in Perryville. The Carrier argues that at the time of this overtime assignment, the Claimant was assigned to a production gang with variable headquarters, and that the Claimant did not ordinarily perform this work with the subdivision welding team. The Carrier asserts that the Organization has provided no evidence to dispute this characterization of the work or that the Claimant ordinarily and customarily works with the Perryville Subdivision welding team.**

**The Organization bears the burden of proving a violation of the Agreement. The Board's review of the record shows that the Organization has not demonstrated that the Claimant's work as thermite welder foreman on the production gang required him to be assigned to overtime work ordinarily and customarily performed by the subdivision welder gang. Accordingly, there is no violation of Rule 55.**

**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 3<sup>rd</sup> day of August 2023.