

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45061
Docket No. MW-46535
24-3-NRAB-00003-210526**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

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

PARTIES TO DISPUTE: (
(Keolis Commuter Services

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned employe A. Gerrish to perform overtime service at Gloucester Drawbridge on March 5, 2020 through March 6, 2020 instead of assigning employe R. Marchand thereto (System File S-2011K-112/BMWE 09/2020 KLS).

(2) As a consequence of the violation referred to in Part (1) above, Claimant R. Marchand shall be ‘... compensated eight (8) hours of her respective time and one-half rate of pay, as well as all credits for vacation and all other benefits for the date 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.

Factual Background:

The Carrier contacted Claimant by text message at 9:00 AM and again at 9:31 AM to see if she was willing to perform overtime work. She did not respond to either text until 12:38 PM. By that time the Carrier had already offered the work to A. Garrish, who accepted the work.

Rule 11 governs overtime, and states as follows in pertinent:

When necessary to work employees under this Rule, the senior available qualified employees will be called according to the following:

(a) Preference to overtime work on a regular work day which precedes or follows and is continuous with a regular assignment shall be to the senior available qualified employee of the gang or the employee assigned to that work.

(b) Preference to overtime work other than in (a) above, shall be to the senior available qualified 'employee at the headquarters who ordinarily and customarily performs such work.

Position of Organization:

Claimant is the senior available employee at headquarters who ordinarily and customarily performs the work for which an overtime opportunity was available. The Organization maintains A. Garrish does not work out of that headquarters and should not have been given preference for the work. Claimant responded almost 10 hours before shift start.

The Agreement requires that employees be called with offers of overtime. The Carrier's choice to text Claimant was out of compliance with the express contractual language. Claimant had a right to be called instead of texted, and she was denied this right.

Position of Carrier:

Claimant was offered the work in question before Gerrish, but failed to accept the work in a timely manner, thereby forfeiting any right she may have had to the overtime shift. As is customary, the Carrier contacted Claimant by text message.

After waiting half an hour, a reasonable amount of time for a response, the Carrier reasonably concluded that Claimant was not interested in the work, and moved down the list to secure coverage.

The Carrier cannot risk its operations by giving unlimited time for employees to respond to its offer of overtime. It therefore acted reasonably and in conformance with the Agreement when, not hearing from Claimant, it moved on to assign the work to the next accepting employee on the seniority list.

Analysis:

The Agreement language requiring employees to be called with overtime opportunities predates texting. As reasonable as it is for the Carrier to text employees, the Agreement says “employees will be called.”

Significantly, the record in this case is devoid of any indication that the parties had a past practice of allowing texts to serve as ‘calls’ within the meaning of this provision. As a result, this Board lacks grounds on which to find that the means of notification in this particular case was in accordance with contract language. Had there been evidence of past practice, a different result might well have been in order.

AWARD

Claim sustained in accordance with the Findings.

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 31st day of October 2023.