

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45372
Docket No. MW-47635
25-3-NRAB-00003-220663**

The Third Division consisted of the regular members and in addition Referee Barbara C. Deinhardt when award was rendered.

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

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier offered and assigned junior employe B. Marasiak to perform overtime snow duty work (spreading salt) at the Bear Car Shops located in Bear, Delaware, on February 1, 2021, instead of assigning senior employe V. Caulk thereto (System File BMW-160051-TC AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant V. Caulk shall now be compensated ‘*** fourteen (14) hours overtime paid at his respective time and one-half rate of pay and, a twenty (20) dollar overtime meal ticket. Also, all lost credits and benefits normally due must be included with the Carrier’s settlement to make up for the lost work opportunity ***’ (Emphasis in original).**

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 Organization argues that on February 1, 2021, the Carrier designated junior employee B. Marasiak to perform snow duty work at the Bear Car Shops. This work assignment was to provide snow coverage, which consisted of spreading salt. The Carrier failed to call out and assign Claimant to perform this work despite him being the senior, available and qualified employee. Rule 55 provides that preference for overtime service shall be given to the senior qualified, available employee who customarily and ordinarily performs such work.

According to the Carrier, the Organization has not met its burden of proving that Claimant was entitled to the overtime assignment. First, snow removal is not reserved exclusively to the Organization or any class thereof under the CBA or through past practice on the property. Virtually every craft on Amtrak, as well as non-agreement employees, participates in snow removal when and where necessary, to ensure the safe passage of trains, and where employees and customers need safe access to Amtrak facilities. Furthermore, there is long history of “snow duty” being performed by all crafts. Even if Claimant was entitled to the work, he was not available as he declined to work the storm. The Carrier asserts that Claimant declined snow duty overtime opportunity beginning on January 31, 2021 and because he had declined this opportunity on January 31, 2021, he consequently made himself unavailable for the overtime assignment on February 1, 2021.

Further, even if this were a valid claim, the Carrier takes exception to the request for any payment at the overtime rate. It is well-established on this property that the appropriate payment for missed work opportunities is at the straight-time rate of pay.

Upon a review of the record as a whole, the Board finds that the Organization has met its burden of proof. The record here establishes that the foreman who assigned the overtime only asked Claimant if he was available to work on January 31. Claimant said he was not. There was no inquiry about his availability for February 1 and there was no offer of overtime for the entire snow event. Under these circumstances, we find that the Agreement was violated.

However, we also find that the payment should be at the straight-time rate of pay. The Carrier argues that if there were a violation, the remedy is payment for the hours missed, but at the straight time rate, rather than the overtime rate, as claimed by the Organization. We agree. Arbitral precedent on this property has clearly established that straight time or pro rata rate for lost overtime opportunities is the appropriate measure of damages.

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 19th day of December 2024.