

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45374  
Docket No. MW-47676  
25-3-NRAB-00003-220358**

**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 called out and assigned Zone 1A-Headquartered employee E. Frontuto, Jr., to perform overtime track foreman work, in support of Gang Z192, located at or nearby Point Interlocking (Mile Posts 89.9 - 90.3 on Amtrak’s PW Line) on August 11, 12, 13, 17, 18, 19, 20 and 24, 2020 instead of assigning Zone 1-Headquartered Track Foreman B. Scott to the work in question (System File BMWE-159417-TC AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Scott shall now receive ‘\*\*\* eighty-four (84) hours overtime paid at time and one half rate at the applicable M/W Foreman Track overtime rate of pay (\$53.175/hour) for a total of (4,466.70) and, that all lost credits and benefits normally due \*\*\*’ (Emphasis in original) also be accorded him.”**

**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.**

**On eight dates from August 11 to August 24, 2020 (84 hours), the Carrier assigned overtime work of upgrades and maintenance to track structures to Gang Z192, of which Elmer Frontuto was the junior track foreman.**

**The Organization argues that the work that the Carrier assigned to Frontuto should have been assigned to Claimant. Claimant was qualified and available to perform the work and he was senior to Frontuto. He was headquartered in the division in which work zone Gang Z192 was performing the work. Therefore, the Carrier violated Rules 55 and 90-A. The remedy is 84 hours at the overtime rate.**

**According to the Carrier, the Organization has not met its burden of proving that the Carrier violated the Agreement when it assigned overtime work to Mr. Frontuto. Rule 55 states in relevant part, "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." Arbitral precedent explains that the Rule 55(a) phrase "on work ordinarily and customarily performed by them" need not refer to a specific task, but also the overall purpose of the work. The Claimant is assigned to a contractor protection gang, providing contractor support for special projects. That is the work "ordinarily and customarily performed" by the Claimant. The claimed work was not related to contract protection work, but to upgrades to and maintenance of track structures. Frontuto holds a position within the maintenance organization, which normally and customarily performs the precise type of work performed during the overtime shifts.**

**Upon a review of the record as a whole, the Board finds that the Organization has not met its burden of proving that the Claimant was entitled to the claimed 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 19<sup>th</sup> day of December 2024.