

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45375
Docket No. MW-47705
25-3-NRAB-00003-220428**

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 junior employees C. Bockner, S. Nuriddin and N. Hicks to perform overtime in support of Track Surfacing Gang PVLT Z01, at Oak Interlocking (Mile Post 62.9) on October 11, 2020 instead of assigning senior employees S. Dugan, A. Marzulli and M. Jones, respectively, who were also headquartered in the controlling work zone, thereto (System File BMWE-159678-TC AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants S. Dugan, A. Marzulli and M. Jones shall now each be paid ten and one half (10.5) hours of overtime at their respective rates of pay and accorded all lost credits and benefits normally due, too.**

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.

This claim involves Sean Dugan, Alexander Marzulli, and Marcus Jones (Claimants), who claim to have missed an overtime opportunity of 10½ hours of overtime on Sunday, October 11, 2020. Claimants assert that they should have been chosen for the overtime work and the Carrier has violated Rules 14, 55 and 90-A of the Agreement.

The Organization argues that the work that the Carrier assigned to Charles Bockner should have been assigned to the Claimant. The Claimant was qualified and available to perform the work and he was senior to Bockner. 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. The Organization makes the same arguments in reference to Shahid Nuriddin being assigned instead of Alexander Marzulli and Nelson Hicks being assigned instead of Marcus Jones. According to the Organization, there is no dispute that Claimants were the senior employees and consequently, in accordance with the clear and unambiguous language of Rule 55, there can be no question that the Carrier was obligated to assign Claimants, who were regularly assigned to the territory in which the claimed work took place and fully qualified, to perform the disputed overtime work.

According to the Carrier, the Organization has not met its burden of proving that Claimants were entitled to the overtime assignment. The Carrier did not otherwise violate Rule 14 or Rule 55 when it assigned work to Mr. Bockner, Mr. Nuriddin, and Mr. Hicks. They were scheduled to work an overtime assignment supporting SES at Hook Interlocking on October 11. After they had reported for work, the Carrier was made aware that the foreman in charge of the work at Hook could not report for duty. As the employees had already begun their shift, they were reassigned to support other extra work that they were qualified and available to perform. The three employees were rerouted to Oak Interlocking to assist members of Gang PVLT Z01.

The three Claimants were not overlooked for predetermined overtime, nor were they skipped on a callout. The three employees in gang MAST Z01 were properly assigned to perform their original work; when they were unable to do so, instead of being sent home without pay, they were directed to Oak Interlocking to provide additional assistance and protection for gang PVLT Z01. The Carrier has a right to make use of all qualified employees already on the property before calling out for additional qualified and available employees. Therefore, the Carrier was within its rights to assign the employees to the work claimed.

Absent a clear call for overtime at the Oak Interlocking location, Rule 55 should not be triggered by the Carrier's utilization of manpower here, the Carrier argues. There is nothing in the rule limiting the Carrier from allowing employees to work as extra help on a project, after unexpectedly having their original assignment canceled.

Upon a review of the record as a whole, the Board finds that the Organization has not met its burden of proof. When they were not able to perform the overtime work because the foreman was not present, the junior employees were assigned to extra track protection work. It was not preplanned overtime. There is no evidence that the Carrier knew that the foreman would not report. While we recognize the importance of seniority in the assignment of overtime, under the unique circumstances of this case, we find that there was no violation of the Agreement.

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 19th day of December 2024.