

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45380
Docket No. MW-47869
25-3-NRAB-00003-230022**

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 employee Z. Garrant to perform overtime assisting the Bridge and Building (B&B) Department in erecting portable bridge plates at the Hamilton train station on the Carrier’s New York to Philadelphia Line on March 19, 20 and 21, 2021 (continuing overnights into the following dates) instead of assigning senior employee B. Chiappetta thereto (System File BMWE-160568-TC AMT).

(2) The Agreement was violated when the Carrier called out and assigned junior employee K. Norman to perform overtime assisting the B&B Department in erecting portable bridge plates at the Hamilton train station on the Carrier’s New York to Philadelphia Line on March 19, 20 and 21, 2021 (continuing overnights into the following dates) instead of assigning senior employee P. Beauparlant thereto (System File BMWE-160567-TC).

(3) The Agreement was violated when the Carrier called out and assigned junior employee A. Griffin to perform overtime assisting the B&B Department in erecting portable bridge plates at the Hamilton train station on the Carrier’s New York to Philadelphia Line on March 19, 20 and 21, 2021 (continuing overnights into the following dates) instead of assigning senior employee T. Otzelberger thereto (System File BMWE-160564-TC).

(4) The Agreement was violated when the Carrier called out and assigned junior employee D. Carrington to perform overtime assisting the B&B Department in erecting portable bridge plates at the Hamilton train station on the Carrier's New York to Philadelphia Line on March 19, 20 and 21, 2021 (continuing overnights into the following dates) instead of assigning senior employee P. Fraley, Jr. thereto (System File BMWE-160563-TC).

(5) The Agreement was violated when the Carrier called out and assigned junior employee J. Ryan to perform overtime assisting the B&B Department in erecting portable bridge plates at the Hamilton train station on the Carrier's New York to Philadelphia Line on March 19, 20 and 21, 2021 (continuing overnights into the following dates) instead of assigning senior employee H. Williams thereto (System File BMWE-160565-TC).

(6) The Agreement was violated when the Carrier called out and assigned junior employee R. Trembler to perform overtime assisting the B&B Department in erecting portable bridge plates at the Hamilton train station on the Carrier's New York to Philadelphia Line on March 19, 20 and 21, 2021 (continuing overnights into the following dates) instead of assigning senior employee G. Hartley, Jr. thereto (System File BMWE-160566-TC).

(7) The Agreement was violated when the Carrier called out and assigned junior employee B. Cantres to perform overtime assisting the B&B Department in erecting portable bridge plates at the Hamilton train station on the Carrier's New York to Philadelphia Line on March 21, 2021 (continuing overnight into the following date) instead of assigning senior employee W. Maine thereto (System File BMWE-160562-TC).

(8) The Agreement was violated when the Carrier called out and assigned junior employee C. Duff to perform overtime assisting the B&B Department in erecting portable bridge plates at the Hamilton train station on the Carrier's New York to Philadelphia Line on March 21, 2021 (continuing overnight into the following date) instead of assigning senior employee F. DeGregorio thereto (System File BMWE-160559-TC).

(9) The Agreement was violated when the Carrier called out and assigned junior employee T. Roth to perform overtime assisting the B&B Department in erecting portable bridge plates at the Hamilton train station on the Carrier's New York to Philadelphia Line on March 21, 2021 (continuing overnight into the following date) instead of assigning senior employee L. Perez thereto (System File BMWE-160510-TC).

(10) As a consequence of the violation referred to in Part (1) above, Claimant B. Chiappetta shall now '*** receive compensation for the forty (40) hours overtime earned by Z.L. Garrant as referenced herein and payable at the Claimant's respective rate. ***' and also receive '... any other appropriate relief, making Claimant whole in every way for any loss resulting from Management's violations and that all lost credits and benefits normally due must be included with the Carrier's settlement.'

(11) As a consequence of the violation referred to in Part (2) above, Claimant P. Beauparlant shall now '*** receive compensation for the Forty (sic) (40) hours overtime earned by K.A. Norman as referenced herein, and payable at the Claimant's respective rate. ***' and also receive '... any other appropriate relief, making Claimant whole in every way for any loss resulting from Management's violations and that all lost credits and benefits normally due must be included with the Carrier's settlement.'

(12) As a consequence of the violation referred to in Part (3) above, Claimant T. Otzelberger shall now '*** receive compensation for the Forty (40) hours overtime earned by A.M. Griffin as referenced herein, and payable at the Claimant's respective rate. ***' and also receive '... any other appropriate relief, making Claimant whole in every way for any loss resulting from Management's violations and that all lost credits and benefits normally due must be included with the Carrier's settlement.'

(13) As a consequence of the violation referred to in Part (4) above, Claimant P. Fraley, Jr. shall now '*** receive compensation for the forty (40) hours overtime earned by D.M. Carrington as referenced herein and payable at the Claimant's respective rate. ***' and also receive '... any other appropriate relief, making Claimant whole in every way for any loss resulting from Management's violations and that all lost credits and benefits normally due must be included with the Carrier's settlement.'

(14) As a consequence of the violation referred to in Part (5) above, Claimant H. Williams shall now ‘*** receive compensation for the forty (40) hours overtime earned by J. Ryan as referenced herein and payable at the Claimant’s respective rate. ***’ and also receive ‘... any other appropriate relief, making Claimant whole in every way for any loss resulting from Management’s violations and that all lost credits and benefits normally due must be included with the Carrier’s settlement.’

(15) As a consequence of the violation referred to in Part (6) above, Claimant G. Hartley, Jr. shall now ‘*** receive compensation for the forty (40) hours overtime earned by R.P. Trembler as referenced herein and payable at the Claimant’s respective rate. ***’ and also receive ‘... any other appropriate relief, making Claimant whole in every way for any loss resulting from Management’s violations and that all lost credits and benefits normally due must be included with the Carrier’s settlement.’

(16) As a consequence of the violation referred to in Part (7) above, Claimant W. Maine shall now ‘*** receive compensation for the eleven (11) hours overtime earned by B. Cantres as referenced herein, and payable at the Claimant’s respective rate. ***’ and also receive ‘... any other appropriate relief, making Claimant whole in every way for any loss resulting from Management’s violations and that all lost credits and benefits normally due must be included with the Carrier’s settlement.’

(17) As a consequence of the violation referred to in Part (8) above, Claimant F. DeGregorio shall now ‘*** receive compensation for the eleven (11) hours overtime earned by C.J. Duff as referenced herein, and payable at the Claimant’s respective rate. ***’ and also receive ‘... any other appropriate relief, making Claimant whole in every way for any loss resulting from Management’s violations and that all lost credits and benefits normally due must be included with the Carrier’s settlement.’

(18) As a consequence of the violation referred to in Part (9) above, Claimant L. Perez shall now ‘*** receive compensation for the eleven (11) hours overtime earned by T.W. Roth as referenced herein and payable at the Claimant’s respective rate. ***’ and also receive ‘... any other appropriate relief, making Claimant whole in every way for any loss resulting from Management’s violations and that all lost credits and benefits normally due must be included with the Carrier’s settlement.’”

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 March 19, 20 and 21, 2021, continuing overnights into the following dates (respectively), the Carrier designated junior employees Z. Garrant, K. Norman, A. Griffin, D. Carrington, J. Ryan, R. Trembler, B. Cantres, C. Duff and T. Roth to perform overtime assisting the Bridge and Building (B&B) Department in erecting portable bridge plates at the Hamilton train station on the Carrier's New York to Philadelphia Line. In each case, the Carrier failed to call out and assign Claimants to perform this work despite being the senior, available and qualified employees. Rule 55 provides that preference for overtime service shall be given to the senior qualified, available employee who customarily and ordinarily performs such work. Installing bridge plates is work that all BMW representative employees have performed since the inception of the relationship between the Carrier and the Organization. In this case, there is no dispute that the junior employees regularly performed the same duties as Claimants. The Carrier was obligated to offer and give preference to Claimants to perform the disputed overtime.

According to the Carrier, the Organization has not met its burden of proving that Claimants were entitled to the overtime assignment. According to the Carrier, the claims should be denied because Claimants were not available for the overtime due to having already committed to another overtime assignment by the time the one in question was planned. Specifically, they accepted work during an upcoming 55-hour outage to support the installation of platforms at Hamilton Station. The assignment Claimants accepted was scheduled for the same period of time as the claimed assignment. Leading up to the date of both assignments, Claimants' platform overtime assignment was cancelled and replacement of bridge plates continued as scheduled. It

would have placed an undue operational burden on the Carrier to remove the undercutter employees from their scheduled overtime assignment and replace them with Claimants. The principle that the Carrier is not required to rearrange its overtime plans every time a new need arises has been well-established by arbitral authority.

Upon a review of the record as a whole, the Board finds that the Organization has not met its burden of proof. While we recognize the importance of assigning overtime according to seniority, in this case, the overtime assignment which rendered these Claimants unavailable for the claimed work was only canceled at the end of the shift the day before the overtime assignment was scheduled to begin. Under these circumstances, it would have been unreasonable for the Carrier to be required to unassign the employees who had been assigned to the claimed work and reassign Claimants. There is no evidence that there was any attempt by the Carrier to subvert the intent of Rule 55 in this case.

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.