

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45397
Docket No. MW-47644
25-3-NRAB-00003-220985**

The Third Division consisted of the regular members and in addition Referee Diego Jesús Peña when the 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 called in junior employees R. Castro and S. Brown to perform overtime work as Bridge and Building (B&B) Mechanics at the Haverhill Station to repair a mini high platform there on February 21, 2021 from 6:00 A.M. until 11:00 A.M. instead of using Wilmington headquartered senior B&B Mechanic S. Hancock who was the senior available qualified employee at the headquarters who ordinarily and customarily performed such work at Haverhill Station (System File S-2111K-1113/BWME 34/2021 KLS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Hancock shall now be compensated five (5) hours at the B&B Mechanics time and one-half rate of pay, in addition to all credits for vacation and all other benefits under our Agreement.”**

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

Claimants S. Hancock, a B&B Mechanic assigned to the Wilmington headquarters.

On February 21, 2021, the Carrier's radio room called Hancock to notify him of an overtime assignment for overtime work needed at the Haverhill Station to repair a mini high platform. According to the seniority call sheet, Claimant Hancock did not answer the radio room's call, and he did not have a voice mailbox for a message to be left. The Carrier subsequently assigned employees R. Castro, who works out of Ayres, Massachusetts and S. Brown, who works of Waltham, Massachusetts, to perform the overtime work at Haverhill Station. This work took place from 6:00 AM to 11:00 AM for a total of five (5) hours of overtime. Castro and Brown were both junior to Hancock.

Position of Organization

The Organization maintains that by replacing the Claimant with junior employees, the Carrier violated Rules 5 and 11 of the Agreement. Rule 5 is the Seniority Article and Rule 11 is the Overtime Article. The Organization contends that the Claimant was the most senior available employee and should have been assigned the overtime work in question.

In response to the Carrier's contention that it attempted to contact the Claimant and that he had no voice mail for a message to be left, the Organization contends the Carrier has failed to prove its affirmative defense. The Organization cites several Board decisions holding that a reasonable attempt must be made to contact the more senior employee for an overtime assignment. They also cite several awards that hold a reasonable attempt requires more than making a single call.

Carrier's Position

The Carrier argues that it complied with its obligations under Rules 5 and 11 when the radio room attempted to notify the Claimant about the available overtime work. It maintains that it complied with the established call-out procedures and that it

was unable to notify the more senior Claimant about the available overtime opportunity, and thus assigned the work to the more junior employees.

Analysis

This is a rules case. For that reason, the Organization has the burden of proving its case by a preponderance of the evidence. Generally, in rules cases, the Board will examine the facts brought forward by the Organization and compare and analyze those facts against the relevant agreement provisions at issue.

Rule 5, “Seniority” states:

1. Seniority of employees covered by this Agreement starts at the time and date their pay starts.
2. When two or more employees’ pay starts at the same time and date, they shall be given a
4. Assignments to positions covered by this Agreement will be based on qualifications and seniority; qualifications being sufficient, seniority will govern.

The relevant section of Rule 11, “Overtime” states:

4. When necessary to work employees under this Rule, the senior qualified employees will be called according to the following:
 - (a) Preference to Overtime work on a regular workday 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.

The burden was on the Organization to prove that the Carrier violated the relevant provisions of Rules 5 and 11. This burden also required the Organization to establish that the Claimant was available to perform the assignment. The evidence established that he was the most senior employee who ordinarily and customarily

performed this work, but there was no evidence in the record that he was available to perform the work at the time the Carrier attempted to contact him.

The evidence established that the radio room attempted to contact him, and that the Claimant did not answer the call and that he had no voice mail set up. The Organization cites to several awards that hold that a single attempt to contact the most senior employee is not reasonable. Those cases were correctly decided; but, in those cases, the Organization established that the claimants were available to work when the Carrier attempted to contact them. (See Third Division Awards 28796, 29527, 31204, 32107 and PLB Award 7007). In this case, there is no evidence that the Claimant was available to work on the date or at the time the Carrier contacted him.

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.