

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45405  
Docket No. MW-47700  
25-3-NRAB-00003-221108**

**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 utilized WEO F. Durant to perform Driver A work, including but not limited to, driving a dump truck on overtime at Greenbush Station from 10:00 P.M. on July 14, 2021 through 6:00 A.M., and on July 15, 2021 instead of assigning the work to Franklin-headquartered Driver A M. Herrera was the senior available qualified employee at the headquarters who ordinarily and customarily performed such work (System File S-2111K-1144/BWME 75/2021 KLS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Herrera shall now be compensated eight (8) hours at the Driver A time and one-half rate of pay, in addition to all credits for vacation and all other benefits for the date claimed for the missed work opportunity.”**

**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**

Claimant M. Herrera works as a Driver A. assigned to the Franklin headquarters.

**Position of Organization**

The Organization claims that the Carrier violated Rules 5 (Seniority) and 11 (Overtime) of the Agreement on July 14, 2021 when it assigned Driver A work to J. Durant. The Organization contends that the Claimant was the most senior available employee and should have been assigned the overtime work in question.

**Carrier's Position**

The Carrier maintains that there is no evidence it violated Rules 5 or 11. It argues that it properly assigned driving duties to WEO Durant because he is a qualified CDL driver and he utilized the truck for transportation to and from a job site.

**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. To satisfy this burden, it was incumbent on the Organization to produce evidence supporting the elements of its claim.

Upon review of the entire record, the Board determines that the Organization failed to offer any actual evidence, such as employee statements, that the Claimant ordinarily and customarily performed the work at issue. The party with the burden of proof may not rely on mere assertions. Third Division Award 44686. For the Board to sustain a position, reliable and probative evidence must be contained in the record in support of a particular claim or defense. *See e.g., Award No 581, IBEW and Metro-North Commuter Railroad (Capone 2015).*

**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.