

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45406  
Docket No. MW-47701  
25-3-NRAB-00003-221109**

**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 employe P. Espinola to perform overtime trackman duties (track panel work) at Cohasset Station on June 5, 2021 instead of properly offering the work to Braintree-headquartered senior Trackman R. Savory who was the senior available qualified employe at the headquarters who ordinarily and customarily performed such work at Haverhill Station (System File S-2111K-1134/BWME 67/2021 KLS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Savory shall now be compensated eleven (11) hours of his respective 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**

Claimant R. Savory worked as a senior Trackman assigned to the Braintree headquarters in the Maintenance of Way Department.

On June 5, 2021, Mr. Joe Neves, Senior Engineer-Track, called the Claimant to work overtime for track panel work at the Cohasset Station. According to Mr. Neves, the Claimant did not answer or return the call during the parties' waiting time procedure. Because he did not hear from Claimant, Mr. Neves then called the next employee to work the overtime.

The Claimant saw a missed call from an unknown number on his phone but there was no corresponding voice message. The Claimant returned the call, but did not receive an answer to his returned call.

**Position of Organization**

The Organization maintains that by replacing the Claimant with a junior employee, 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 a junior employee.

**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. It also established that because the Claimant returned the call, he was available to perform the work at the time the Carrier contacted him.

The Carrier maintains that it attempted to contact the Claimant and that he did not answer Senior Engineer Neve's call and did not return his call timely within call-in procedures established by the parties. Because this is an affirmative defense, the burden was on the Carrier to present evidence supporting its position. While the Carrier did establish that Senior Engineer Neves contacted the Claimant, there was no evidence presented with regards to the parties' call-out procedures.

This Board has consistently held that a reasonable attempt must be made to notify the proper employee for an overtime opportunity. *See e.g.*, Third Division Awards 18245, 20109 and 20534. This Board has also consistently held that a single telephone call does not constitute a reasonable attempt to notify the proper employee for an overtime opportunity. *See e.g.*, Third Division Awards 28796, 29527 and 31704.

Under these circumstances and after reviewing and considering the parties' arguments and cited Awards, the claim is sustained.

The Claimant is to be compensated eleven (11) hours of his respective time and one-half rate of pay, in addition to all credits for vacation and all other benefits under the Collective Bargaining Agreement.

**AWARD**

Claim sustained.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 19<sup>th</sup> day of December 2024.