

BEFORE PUBLIC LAW BOARD NO. 7007

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
MASSACHUSETTS BAY COMMUTER RAILROAD**

Case No. 33

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it failed to call Radio Room Foreman R. Morris for overtime service on Sunday, January 18, 2009 and instead called and assigned non-agreement employee Mr. J. Maisey to perform overtime service (Carrier’s file MBCR-BMWE-06a/0409).
2. As a consequence of the violation referred to in Part 1 above, Claimant Morris shall now be compensated for eight (8) hours at his applicable time and one-half rate of pay for overtime wages lost on January 18, 2009.”

FINDINGS:

The Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the parties’ Agreement when it called and assigned a non-agreement employee to perform certain overtime work, rather than calling and assigning this work to the Claimant. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier violated the Agreement when it assigned an employee with no active seniority under the Agreement to perform this scope-covered work; because the Carrier failed to assign the subject work to the Claimant, who was the regularly assigned, senior, qualified, and available employee of the class that ordinarily performs such work; because the Carrier’s affirmative defenses were unsubstantiated; and because the requested remedy is entirely appropriate. The Carrier asserts that the instant claim should

be denied in its entirety because neither BMW-employees nor any other agreement-covered employees have performed the subject work in the past; the work at issue is not the exclusive work of BMW employees in that it is performed by almost every craft, every supervisor, and every manager on the railroad; and because the claim is excessive in that the Claimant is not a proper claimant.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement by failing to call the Claimant for overtime service on January 18, 2009. Therefore, the claim must be denied.

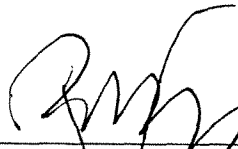
The record reveals that neither the Organization-covered employees nor any other Agreement-covered employees had performed this specified work in the past. This case involved a severe snow storm where Mr. Maisey, the individual who performed the work at issue, had a specialized snow-duty function that he performed on a full-time basis. His position was a non-Agreement position where a person is used to record information to produce snow reports. The Carrier had that management position in effect for several years.

The record also indicates that even if the Claimant had been entitled to perform the work on overtime, he had worked sixteen hours on both January 18 and 19, 2009, and would not have been available to work the hours in question.

For all of the above reasons, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 12/10/10



ORGANIZATION MEMBER

DATED: 12/10/10