

BEFORE PUBLIC LAW BOARD NO. 7007

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

Case No. 37

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

1. The Carrier violated the current Agreement, specifically Rule 11 – Overtime and the "Overtime Protocol" when it failed to properly assign overtime on the claim dates to the Claimant, David Haskins.
2. For this violation the Organization is requesting that the Carrier be required to compensate Claimant Haskins 8 hours at his B&B Foreman's overtime rate of pay for the Carrier's failure to call the proper person in violation of the Rules cited."

FINDINGS:

The Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the parties' Agreement and the Overtime Protocol when it assigned certain overtime work to a B&B Mechanic, rather than to the Claimant, a B&B Foreman. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the cited rules require that the work at issue be assigned to a Foreman, the Claimant, who was available to perform the work; because a B&B Mechanic is not supposed to perform solo work, but is to take direction from a Foreman; and because the Carrier has not re-created and advertised any positions in the Sign Shop, despite many requests from the Claimant and from the Organization. The Carrier contends that the instant claim should be denied in its entirety because the Organization has failed to meet

its burden of establishing the essential elements of the claim; because there is no probative evidence showing that the Carrier violated any provision of the parties' Agreement; because the work was assigned in accordance with the Agreement requirements; and because there has been no showing that the Claimant is qualified to perform the overtime work in question or that such work is required to be performed by a Foreman.

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 when it failed to assign the overtime in question to the Claimant, David Haskins.

The relevant language in this case appears in Rule 11, Sections 4(a) and 4(b). That language states:

4. When necessary to work employees under this Rule, the senior available qualified employees will be called according to the following:
 - (a) Preference to overtime work on a regular work day 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 qualified employee at the headquarters who ordinarily and customarily performs such work.

The Organization has failed to show that the Claimant is qualified to use the machines in the Sign Shop. Moreover, he was not the senior available qualified


employee at the headquarters who ordinarily and customarily performs that type of work.

The Organization contends that the Carrier is required to hire a foreman for the overtime. There is no language in the agreement that requires that. The Carrier only is required to call the senior available qualified employee either at the headquarters or who ordinarily and customarily performs the work as set forth in the above-cited paragraphs.

The Organization has failed to meet its burden of proof in this case. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 11/17/11



ORGANIZATION MEMBER

DATED: 10/26/11