

BEFORE PUBLIC LAW BOARD NO. 7007

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

Case No. 46

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, D. Considine.
2. For this violation the Organization is requesting that the Carrier be required to compensate Claimant Considine 13 hours at his Assistant Foreman Flagman overtime rate of pay due to a junior employee W. Bubanas working a position 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 when it assigned certain overtime work to a junior employee, rather than to the Claimant. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Rules require the Carrier to assign the overtime work in question to a working Assistant Foreman from the roster, the Claimant, who was qualified and available to perform the work; because the Carrier ignored the Overtime rule and longstanding callout procedure, instead asserting that the call was based on some "Policy" that clearly does not exist; and because the Carrier should be held accountable for ignoring Rule 11 and the "Overtime Protocol" while creating its own practice. The Carrier contends that the instant claim should be denied in its entirety because the

Organization has failed in its burden of establishing the essential elements of its claim, and because there was no probative evidence that the Carrier violated any Agreement Rule or established past practice.

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 an agreement when it failed to assign the overtime at issue to the Claimant. Therefore, the claim must be denied.

The Organization takes the position that there is an Overtime Protocol procedure that was agreed to by the parties. The Organization attaches to its submission a part of a document that is entitled, "Overtime Callout: As Amended 6-14-04 Regular Meeting Lodge 201." This Board stresses that it is only part of a document and there are no signatures on it.

In its response to the claim, the Carrier's Manager of Labor Relations states:

The Organization states that the Carrier and the Organization agreed to adopt a callout procedure in 2004 that prohibited the South Side Flagging Pool to back up the North Side or vice versa. I am unable to find any such agreement or side letter that would support your position and point out that the method of calling out flagging details, which the BMWE has accepted to date, has been the same since July 1, 2003. This policy clearly states that when the North Side Flagging Pool is exhausted, the calls go to the South Side Flagging Pool. Further, if both pools are exhausted, the call goes to the Assistant Foreman of the Maintenance Crew of the territory. Finally, if no employee is available in the territory, the call goes to the top of the Assistant Foreman roster.

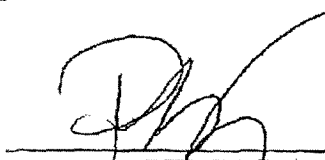
It is fundamental that if the Organization is relying on an agreement and the Carrier denies that that agreement exists, the Organization has the burden of coming

forward with the entire agreement showing that it was agreed to by the parties.

Since the Organization has failed to come forward with the agreement on which it is relying, this Board has no choice but to deny the claim. Therefore, the claim must be denied.

AWARD:

The claim is denied



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 11/17/11

 I DECENT

ORGANIZATION MEMBER

DATED: 10/26/11