

BEFORE PUBLIC LAW BOARD NO. 7007

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

Case No. 14

STATEMENT OF CLAIM:

- (1) The Agreement was violated when the Carrier failed to assign B& B Mechanic Foreman P. Popczuk to overtime service in connection with supervising B&B Mechanic D. Christian in fabricating steel uprights for the canopy at Melrose Station on May 24, 25 and 26, 2004 and instead assigned junior Foreman N. Munro (Carrier's File MBCR-BMWE-17/1004).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant P. Popczuk shall now be compensated at his time and one-half rate of pay for all overtime hours worked by junior employee N. Munro on May 24, 25 and 26, 2004.

FINDINGS:

The Organization filed the instant claim alleging that the Carrier violated the parties' Agreement when it failed to assign the Claimant to perform the work in question, instead assigning a more junior employee. The Carrier denied the claim.

The Organization initially contends that there is no dispute as to the Claimant's superior seniority, so this dispute centers on the Carrier's reason for not affording the Claimant this overtime opportunity. The Organization asserts that the work in question here is that performed by the B&B mechanic foreman, not that performed by the B&B mechanic. The foreman's duty in this instance is to supervise the overall fabrication work and not to inspect the quality of the wells or to perform welding work. The Organization emphasizes that the Carrier has not presented any evidence that the position

of B&B mechanic foreman was required to have certification as a welder.

The Organization maintains that both the Claimant and Munro were assigned and working as B&B mechanic foremen headquartered at the same location. Because there is no dispute that the Claimant had superior seniority, the Organization submits that the Board need look no further than the clear and unambiguous language of Rule 11, 4(b), to sustain this claim. Citing a number of Board Awards, the Organization insists that once the Carrier decided to secure the overtime services of a B&B mechanic foreman, it was obligated to give preference to the Claimant in recognition of his superior seniority.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The Carrier initially contends that the initial claim was grossly excessive and presented erroneous allegations. Following the Carrier's denial, the Organization "modified" the claim to reflect fifteen hours pay at the overtime rate. The Carrier asserts that the claim still is flawed and lacking in merit. The Carrier argues that it must observe various state requirements and skill certifications, and there is no dispute that the Claimant did not hold a structural welder's certificate during the period in question. The Carrier emphasizes that this was required for the assignment in question. Moreover, there is no rule in the Agreement that limits the Carrier's prerogative to set job skill requirements and assign work to qualified employees. The Organization has failed to show that the Claimant was entitled to supervise the structural welding "just because he is a foreman."

The Carrier maintains that the Organization has utterly failed to meet its burden of

proof, the claim is excessive, and the claim should be denied or dismissed in its entirety.

The Carrier determined that the Claimant did not satisfy the qualification criteria identified in paragraph 4(b) of Rule 11.

The Carrier then asserts that the Organization failed to satisfy the 185-day time period for referring a denied claim to a tribunal, pursuant to Rule 14. The Carrier points out that it denied the claim on January 21, 2005, but the Organization did not refer this matter to a tribunal until December 14, 2006, well beyond the time limit. The Carrier argues that the claims are flawed at this point, and they should be dismissed.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

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 Claimant to overtime service in connection with supervising a B&B Mechanic in fabricating steel uprights for the canopy at Melrose Station on May 24, 25, and 26, 2004. Therefore, the claim will have to be denied.

The Organization is correct that the Claimant has more seniority than the junior employee who was assigned to the overtime in question. However, the record reveals that the Carrier was required to observe various state requirements and skill certifications and the Claimant did not hold a structural welder certificate during the period in question. A structural welder certificate was required for the assignment in question. It is

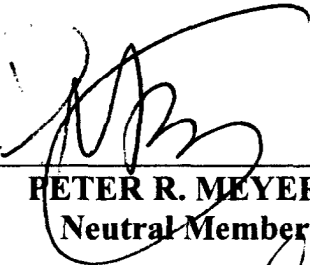
fundamental that the Carrier has the right to set the job skill requirements when it assigns work to employees. The Carrier has the right to determine who is qualified to perform the job. The Carrier is correct that the Organization did not present sufficient evidence to show that the Claimant was entitled to supervise structural welding solely because he is a Foreman. Despite the Organization's claims that the Carrier never allowed the Claimant to become a qualified/certified welder, the fact remains that he was not qualified or certified at the time that the Carrier needed the overtime to be performed.

This Board recognizes the importance of seniority in the assignment of overtime. However, in this case, the Carrier selected the junior employee because that junior employee held the certifications and the necessary qualifications which the Claimant did not.

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

AWARD:

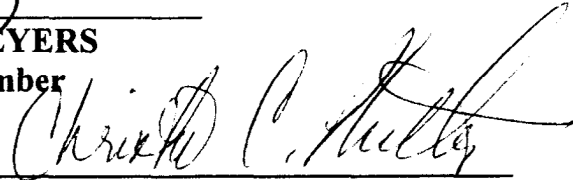
The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER



CARRIER MEMBER

DATED: 4/9/09

DATED: April 9, 2009