

BEFORE PUBLIC LAW BOARD NO. 7007

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

Case No. 35

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

1. The Carrier violated the current Agreement, specifically Rule 8 – Bulletin and Assignment and the "Overtime Protocol" when it failed to properly advertise certain positions at the Readville, MA headquarters in accordance with the rule and procedures for assigning overtime.
2. For this violation, the Organization is requesting that the Carrier be required to compensate Claimant Mark Gorman 82 hours at his Machine Operator's overtime rate of pay due to a junior employee, M. Norton, working a position in violation of the Rules cited."

FINDINGS:

The Organization filed the instant claim, alleging that the Carrier violated the parties' Agreement when it failed to properly advertise certain positions at the Readville, MA, headquarters, resulting in a junior employee working overtime in a position in violation of the Rules. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier violated the Agreement in connection with the assignment of overtime when there is only one crew left to perform that maintenance overtime; because the responsibility area changed to such an extent that the positions must be re-bid; and because the single remaining crew must be re-advertised so that all employees are aware that this crew has all responsibility for maintenance on straight-time and overtime. The Carrier contends that the instant claim should be denied in its entirety because the

Organization failed to meet its burden of establishing the essential elements of its claim; because the Organization has not shown that the Carrier violated the parties' Agreement; and because neither the clear language of the Agreement nor past practice require that overtime territory be included in the bid posting.

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 did not advertise certain positions at the Readville, Massachusetts, headquarters. Therefore, the claim must be denied.

The Organization argues that there was some requirement to abolish and repost positions if the responsibility area changed in some fashion. The record reveals that the practice has been that twice a year, the responsibility area had been reorganized and there has been no protest from the Organization. That has taken place since at least 2003 and probably before that when Amtrak was in control of the property.

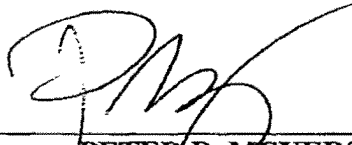
There was no obligation to repost the positions when the responsibility area changed and, therefore, the Claimant had no right to claim any overtime that became available.

Moreover, the Organization has not successfully shown that any past practice that it claims was an unequivocal and established past practice that had been accepted by both parties. The Organization had an obligation to bring forth sufficient evidence that there was such a past practice. It failed in that regard in this case.

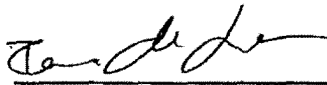
For all the above reasons, the claim must be denied.

AWARD:

The claim is denied.

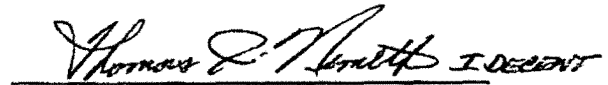


PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 0/17/11



ORGANIZATION MEMBER

DATED: 10/26/11