

BEFORE PUBLIC LAW BOARD NO. 7007

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

Case No. 36

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 108 hours at his B&B Foreman's overtime rate of pay due to a junior employee and B&B Mechanic, D. Dennis 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 and the Overtime Protocol when it assigned certain overtime work to a junior employee, 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 who is qualified and available to perform the work, which is the Claimant here; because a B&B Mechanic is not supposed to perform solo work, especially on a live track; and because the Carrier ignored the Agreement and the Overtime Protocol in this instance. 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 did not assign the overtime in question to the Claimant, David Haskins.

The language at issue is set forth in Rule 11, Sections 4(a) and 4(b). That language states the following:

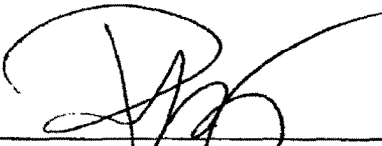
4. When necessary to work employees under this Rule, the senior available qualified employees will be called according to the following:
 - (a) Preference to overtime work on a regular work day which precedes or follows and is continuous with a regular assignment shall be to the senior available qualified 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 argues that since the Carrier first called a foreman for the overtime and he did not take the job, "the Carrier was bound to hire a foreman for the overtime." This Board disagrees. Rule 11, Section 4, only requires that the Carrier call the senior available qualified employee of the gang or at the headquarters. The Carrier

contacted the employee who met the qualifications. There is no requirement that the Carrier contact a foreman. The Organization argues that a foreman is required to oversee the work by the other employee. However, the contract language does not require that. The Carrier has the right to determine who is qualified to perform the job. The Organization has failed to meet its burden of proof that the Carrier failed to comply with the language of the collective bargaining agreement. Consequently, 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