

**BEFORE PUBLIC LAW BOARD NO. 7007**

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

**Case No. 43**

**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, C. O'Brien.
2. For this violation the Organization is requesting that the Carrier be required to compensate Claimant C. O'Brien 12 hours at his B&B Mechanic's overtime rate of pay due to a junior employee and B&B Mechanic, M. Tolson 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 to a B&B Mechanic, the Claimant, who was qualified and available to perform the work; because the Carrier ignored the conversations between the parties regarding how overtime should be handled with regard to a specific crew established to repair bridges and culverts on the North Side; and because the Carrier should be held accountable for creating its own practice while ignoring the Rules and any past practice. The Carrier contends that the instant claim should be denied in its entirety because the overtime work was properly assigned to

a Bridge Crew mechanic because this work was in that crew's section of responsibility, because the Carrier followed proper procedures and the Claimant was not entitled to the overtime, and because the Organization has failed to meet its burden of showing that the Claimant was the senior available and qualified employee and that the Carrier was in breach of the Agreement.

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 called in Mr. Tolson to perform overtime work instead of the Claimant. Therefore, the claim must be denied.

The record reveals that a bridge crew was established to work on the North Side on a culvert in Fitchburg. The work description of that crew was "all repair and replacement of culverts and stationary bridges on the North Side as their territory." Mr. Tolson was a bridge crew mechanic at the time. The Carrier called in the bridge crew first for the culvert work because it was in their section.

Rule 11(4) states, in part:

4. When necessary to work, employees under this Rule, the senior available qualified employee 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 available qualified employee at the headquarters who ordinarily

and customarily performs such work.

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

**AWARD:**

The claim is denied.

  
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**PETER R. MEYERS**  
Neutral Member

  
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**CARRIER MEMBER**

**DATED:** 11/17/11

 J. DECENT  
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**ORGANIZATION MEMBER**

**DATED:** 10/26/11