

BEFORE PUBLIC LAW BOARD NO. 7007

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

Case No. 44

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

1. The Carrier violated the current Agreement, specifically Rules 8 and 11 when it failed to properly assign overtime work on the claim dates to Claimants, P. Brander, K. Bergeron, R. Bly, R. Lutkus, D. Brunelle, M. Bry, J. Lawton, R. Duguay, P. Paglia and James McCarthy.
2. For this violation the Organization is requesting that the Carrier be required to compensate Claimants 12 hours at their respective overtime rate of pay due to violation of the Rules cited on June 26, 2010."

FINDINGS:

The Organization filed the instant claim on behalf of the Claimants, alleging that the Carrier violated the parties' Agreement when it assigned certain overtime work to junior employees, rather than to the Claimants. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the overtime work improperly was assigned to junior BMW members, because the parties had discussed how to get the work done in accordance with the Agreement and had agreed that they could not go wrong by using the most senior employees, and because the Carrier improperly assigned the work to junior employees without any notice of a permanent change in section responsibility areas and without re-advertising the positions as required. The Carrier contends that the instant claim should be denied in its entirety because the claim is deficient on its face, because no new positions or vacancies

were created so the Carrier was not obligated to abolish and repost the positions, and because the Organization has failed to show that the Carrier violated the applicable Rules.

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 assigned the overtime at issue to employees less senior than the Claimants. Therefore, the claim must be denied.

The record reveals that the Carrier was notified by the MBTA on June 16, 2010, of the transfer of the maintenance of the Grand Junction running track to MBCR effective the next day. The Carrier notified the General Chairman of the change. On June 26, 2010, twelve hours of overtime was performed on the Grand Junction running track. The overtime opportunity was given to senior members of the maintenance gang who were qualified and responsible for that particular territory.

This Board agrees with the Carrier that there were no new positions or vacancies created by the transfer of the maintenance work. The Carrier needed the work done on overtime. The work was given to the section that had been responsible for that work. This Board agrees that the Carrier had no obligation to abolish and repost the positions.

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

AWARD:

The claim is denied.

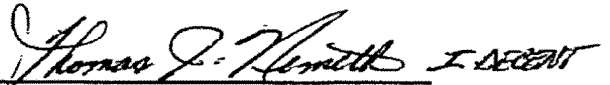


PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 11/17/11



ORGANIZATION MEMBER

DATED: 10/26/11