

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 159

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

(Carrier File MW-BLUE-06-02-LM-042)

Statement of Claim:

Claim on behalf of Trackman S. K. Allen for ten hours overtime in that a senior Trackman who had marked up from a one week vacation was called to assist the R-1 Rail Gang on Saturday, November 19, 2005.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

AWARD

After thoroughly reviewing and considering the transcript and the parties' presentation, the Board finds that the claim should be disposed of as follows:

BACKGROUND

The instant claim was initiated on December 21, 2005 by way of a letter requesting ten (10) hours of overtime for a Trackman due to the fact that a senior Trackman on the same gang who was on vacation during that week was called for overtime on the rest day. The relevant facts giving rise to this claim are as follows:

Prior to going on vacation from November 14, 2005 through November 18, 2005, the Senior Trackman notified his supervisor that he would be available for overtime calls on November 19th and 20th, the weekend contiguous to his vacation. Accordingly, when it became necessary to call for local section forces to assist the Rail Gang, the Senior Trackman on the section was called. The Carrier relies upon Rule 42 which requires the Carrier to notify employees of overtime opportunities on a seniority basis.

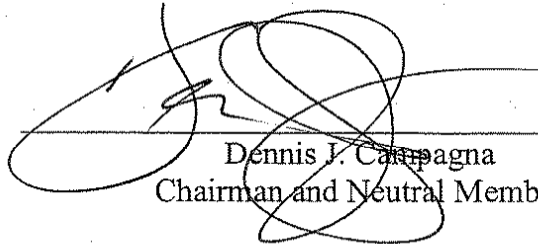
Contrary to the position taken by the Carrier in this matter, the Organization asserted that the Senior Trackman was not available for weekend overtime service since he was on vacation during the workweek covering November 14th through November 18th. Accordingly, the Senior Trackman was not available for any overtime opportunity until such time as he reported back to his regular shift on Monday November 21, 2005. Moreover, the Organization maintains that a more correct reading of Rule 42 would render the Claimant eligible for the overtime opportunity at issue since the Claimant and not the Senior Trackman (who was on vacation) was "[w]orking in the immediate force or gang delegated to perform the work."

DISCUSSION

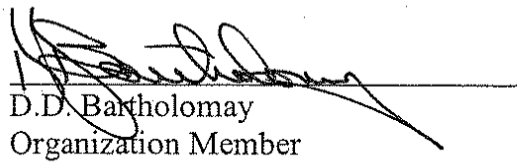
Following a careful review of the record evidence, the Board finds in this particular instance, and given these unique facts, that the Organization has the more persuasive position. Accordingly, and without setting a precedent for other cases of like nature which must be decided on their own merits, the Board finds that the Claimant is due the ten (10) hours of overtime claimed.

CONCLUSION

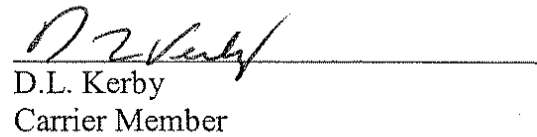
The claim is sustained.



Dennis J. Campagna
Chairman and Neutral Member



D.D. Bartholomay
Organization Member



D.L. Kerby
Carrier Member

DATED: June 30, 2007 – Buffalo, New York