

**NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 956
AWARD NO. 180
(CASE NO. 180)**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION - IBT RAIL CONFERENCE**

vs

NEW JERSEY TRANSIT RAIL OPERATIONS

**Michael Capone, Chair and Neutral Member
Sean D. Gerie, Employee Member
Regine C. Grice, Carrier Member**

Hearing Date: May 13, 2025

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated on February 14, 15 and 16, 2023, when the Carrier improperly assigned B&B Capital track gang employes to perform overtime work (replacing rub rail) at North Elizabeth Station, instead of assigning Bridge and Building (B&B) Basic Track gang employes M. Zueno [sic], B. Taylor, A. Kaspar, thereto (Carrier’s File BMW 8-2-23C NJT).

2. As a consequence of the violation referred to in Part 1 above, Claimants M. Zueno, A. Kasper and W. Taylor, Jr. shall now each be compensated for twenty-eight and one-half (28.5) hours at their applicable overtime rates of pay for February 14, 15 and 16, 2023.”

STATEMENT OF FACTS

This Board derives its authority from the provisions of the Railway Labor Act, as amended, together with the terms and conditions of the collective bargaining agreement (hereinafter referred to as the “Agreement”) by and between the Brotherhood of Maintenance of Way Employees (hereinafter referred to as the “Organization”) and the New Jersey Transit Rail Operations (hereinafter referred to as the “Carrier”).

The Organization alleges that the Carrier failed to assign overtime for replacing rub rails to the Bridge and Building ("B&B") Basic Track Gang at the North Elizabeth Station on February 14, 15, and 16, 2023. It asserts that the Carrier violated Rule 17 when it improperly assigned B&B Capital Gang employees to work the overtime instead of the Basic Gang who it claims "ordinarily and customarily performed" rub rail work. The on-property record of the Carrier's denials of the claim and subsequent appeals by the Organization indicates that the final decision by the Carrier was on September 11, 2023. The Organization appealed the denial and submitted the matter for adjudication by this Board.

Relevant Contract Provisions

RULE 17 – PREFERENCE FOR OVERTIME WORK

Employees will, if qualified and available, be given preference for overtime work, including calls, on work ordinarily and customarily performed by them during the course of their work week or day in the order of their seniority.

FINDINGS OF THE BOARD

After hearing upon the whole and all evidence as developed on the property, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the hearing thereon. The Claimants were ably represented by the Organization.

The Board finds that the Organization has not met its burden of proof that the Carrier violated the Agreement. A plain reading of Rule 17 offers no ambiguity and therefore, must be applied as written. There is no dispute that the Claimants were not assigned to replace the rub rail in the North Elizabeth Station on February 14 through 16,

2023. The claim submitted indicates it was the Capital Gang who performed the work. The record does not contain evidence that the Carrier is prohibited from assigning the Capital Gang to replace rub rail nor is there evidence that the Basic Gang established "exclusivity" to the work in dispute.

The Board does not find the Organization's claim that the rub rail installation is "work ordinarily and customarily performed" by the Basic Gang to be relevant to the plain meaning of Rule 17 as it applies to the record. The Rule addresses entitlement to overtime and not the legitimacy of the assignment. A reading of the provision provides that the "work ordinarily and customarily performed. . .", which in this instance was done by the Capital Gang, "during the course of their work week or day", entitles those employees who replaced the rub rails on February 14, 15, and 16, 2023, to "be given preference for overtime work". The Capital Gang performed the work as part of their work week and were entitled to the overtime. Rule 17 does not apply to the relief sought. The Organization entreats the Board to decide which group of employees should have been assigned the regular assignment which is not specified in the claim nor the scope of the applicable Rule.

This Board addressed Rule 17 previously in Award Nos. 24 and 27. The findings there support the conclusion that the Claimant's here were not entitled to the overtime on February 14, 15, and 16. In those cases the Board determined that a foreman and employees with less seniority than the claimants, who performed the straight time assignment during the work week, were entitled to the overtime. In each Award the Board reached two separate findings, one denying a portion of the claim and sustaining another. The Board found that the employees who performed the assignment during the work week were properly entitled to the overtime and those that did not perform the straight time

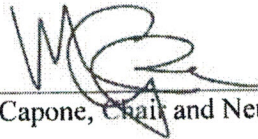
assignment should not have been deemed eligible for the overtime. We reach the same conclusion here and find no basis to stray from the Board's prior interpretation of Rule 17. *See also Third Division Award No. 37,655.* In addition, and similar to the findings in Award Nos. 24 and 27, nothing in the record here indicates that the Capital Gang employees did not perform the work as part of their regular assignment or were unqualified.

In summary, we have reviewed and carefully weighed all arguments and evidence in the record and have found that it is not necessary to address each facet in the Findings. We find the Organization has not met its burden of proof that the Carrier violated the Agreement.

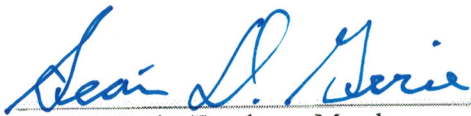
AWARD

Claim denied.

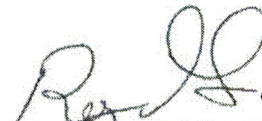
Date: July 1, 2025



Michael Capone, Chair and Neutral Member



Sean D. Gerie, Employee Member



Regine C. Grice, Carrier Member