

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32371
Docket No. MW-31263
97-3-93-3-349

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly assigned and used Sign Writer C. Polinaire to perform B&B mechanics's work beginning November 16, 1991 and continuing, instead of assigning Messrs. H. Austin and/or P. Higuieruela to perform said work (System File NEC-BMWE-SD-3108 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Messrs. H. Austin and P. Higuieruela shall be compensated at the B&B mechanic's time and one-half rate of pay for an equal proportionate share of the total number of man-hours expended by Mr. C. Polinaire in the performance of the B&B mechanic's work beginning November 16, 1991 and continuing until the violation ceases."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On a number of occasions subsequent to November 16, 1991, Carrier utilized Sign Writer C. Polinaire in the performance of B&B carpentry work on an overtime basis. Carpentry work was not work that Polinaire would "ordinarily and customarily" perform, thus he was not entitled to preferential assignment to that work under Rule 55(a) of the Agreement. Claims were filed on behalf of Austin and Higuerauela contending that they were entitled to be called for this carpentry work in preference to Polinaire, under the language of Rule 55(a), reading:

"(a) Employees residing at or near their headquarters will, if qualified and available, be given preference for overtime work, including calls, on work ordinarily and customarily performed by them, in order of their seniority."

Austin's and Higuerauela's claims were "allowed" at Carrier's Director of Labor Relations level, with authorized payments of 224 hours (\$2,307.20) to Austin and eight hours (\$77.60) to Higuerauela.

The dispute before this Board concerns an allegation that these payments are inadequate. Carrier contends that the amounts paid represent the hours that Austin and Higuerauela were available to work overtime to be assigned to the carpentry work that was performed by Polinaire on overtime. Carrier says that Claimant's were not paid for some of the overtime hours worked by Polinaire when a combination of Polinaire's overtime hours and Claimant's regularly scheduled work hours would have exceeded the equivalent of 16 hours work in a 24 hours period.

Carrier contends that its Engineering Department has a long standing proscription against assignments that would require an employee to work more than 16 hours in a 24 hour period. Carrier says that this proscription is in accord with a directive published on November 3, 1986 stating that no employee "should be required to work in excess of 16 hours in a 24 hour period." It argues that the General Chairman was furnished a copy of this notice at the time it was published, thus acknowledging that assignments will not

be made if the assignment would have an employee on duty more than 16 hours in a 24 hour period.

The Board does not find persuasive Carrier's reasons for excluding payments when the combination of overtime hours worked by Polinaire and the scheduled hours of Claimants would have exceeded 16 hours pay in a 24 hour period. It is acknowledged that Polinaire was improperly utilized on overtime work that Austin and Higuera were entitled to perform. They filed a claim seeking payment for the hours Polinaire worked. They are entitled to be paid for these hours as a remedy even if, as Carrier said, such payment would be the equivalent of being on duty in some instances of between 19 and 23 hours in a 24 hour period. The Agreement was violated when Polinaire was used instead of Claimants. As reparations for the violation they are entitled to be paid the equivalent of the total number of hours that Polinaire worked in violation of the Agreement.

The claims have merit. They will be sustained for the total hours worked by Polinaire during the period of time covered by the claim. Carrier may take credit for amounts previously paid.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 30th day of December 1997.