

Award No. 10783

Docket No. SG-9799

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
CLINCHFIELD RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Clinchfield Railroad that:

(a) The Carrier violated the Signalmen's Agreement when on Saturday, June 23, 1956, it called and worked Mr. J. Adkins, a junior SC&E Man at Rocky, N.C., for twelve (12) hours where derailment had occurred, instead of calling and working Mr. J. I. Bradshaw, a senior SC&E Man, who was available and desired the overtime work.

(b) The Carrier now compensate Mr. J. I. Bradshaw, senior SC&E Man twelve (12) hours at his respective overtime rate of pay for Saturday, June 23, 1956.

EMPLOYEES' STATEMENT OF FACTS: The claimant, J. I. Bradshaw, is regularly assigned as SC&E Man in this Carrier's SC&E Gang No. 10, with a seniority date in that class as of 4-05-1956. The junior employe used on the overtime work was SC&E Man J. Adkins, who is also regularly assigned to this Carrier's SC&E Gang 10, with a seniority date in that class as of 4-30-1956.

Friday morning, June 22, 1956, SC&E Gang 10, to which the claimant was assigned, left Erwin, Tenn., and traveled by highway to Marion, N. C., which is approximately 70 miles, to unload some signal poles and was scheduled to be back in Erwin, Tenn., by 4:15 that date. Before the gang departed from Erwin, Tenn., on Friday, June 22, 1956, Gang Foreman G. W. Wilson instructed Claimant Bradshaw to remain in Erwin that day and make signal identification tags which were to be used in signal case wiring. The tags are made on a tag-making machine and the machine is located in the Signal Shop at Erwin.

SC&E Gang No. 10 is assigned with headquarters at camp cars which were located at Erwin, Tenn., on date of June 22 and 23, 1956, and, as pointed out above, the employes of Gang 10 were scheduled to return to Erwin by 4:15, which was their quitting time, on June 22, 1956, after unloading the poles at Marion, N. C.

men in the signal gang without regard to their location — and if a man working at Mile Post 121 was senior to a man working at Mile Post 21 — he would have to be called and transported a distance of 100 miles before the work could be done even though it might be only one hour of overtime.

We believe no such application of Rule 16 (d) can be made. The Rule simply means that when overtime is required of a part of a group of employees working together, the senior employees in the group shall have preference.

CONCLUSION

We have shown that on the date of this claim, gang 10 was divided according to the needs of the service.

Overtime was required on June 23, 1956 of that portion of the gang working at the derailment at Mile Post 196. All the available employees of that group were used.

Claimant was at Mile Post 136 and was not available for the work with the group on project at Mile Post 196.

Rule 16 (d) was applied in this instance just as it has been at all times in the past since the effective date of the agreement, the first and only agreement ever in effect with the Employees.

Carrier submits there has been no violation of the agreement; that the claim is without merit; and that it should be denied. We respectfully request the Board to so find.

All matters contained herein have been presented to the duly authorized representative of the Employees, and they have been made a part of negotiations on the property.

OPINION OF BOARD: The Claimant, J. I. Bradshaw is regularly assigned as SC&E Man in Carrier Gang No. 10, with a seniority date in that class as of April 5, 1956. The junior employee used on the overtime work was J. Adkins regularly assigned by this Carrier SC&E Gang No. 10, with a seniority date in that class of April 30, 1956.

Just what work the members of Gang No. 10 performed on Friday June 22, 1956 is disputed by the parties, however, they are in agreement that Claimant before the gang departed from Erwin, Tenn., was assigned by the Gang Foreman to remain in Erwin that day and make signal identification tags. The record shows that Claimant remained there all day — June 22, 1956.

The Employees assert that the remaining members of the gang left Erwin, Tenn. Friday morning — June 22, 1956 and traveled by highway to Marion, North Carolina, which is about 70 miles, to unload some signal poles and were due to be back in Erwin, Tenn. by 4:15 P.M. that date. That on the after-

noon of June 22, 1956, Engineer Mannion called the gang from Erwin and instructed them to stop at Spruce Pine, North Carolina, which is 42 miles from Erwin, to work on a derailment and to report for work at 7:00 A.M. June 23, 1956 at Spruce Pine, North Carolina.

Carrier on the other hand, states that 9 members of Gang No. 10 worked Friday, June 22, 1956, at the derailment at Rocky, North Carolina and only some of the crew members went to Marion. After the completion of the work at Rocky on Friday, the members of this crew, as well as those who worked at Marion were instructed to work their rest day at the derailment at Rocky, North Carolina. They worked on Saturday June 23 -- for 12 hours and were paid at time and one-half rate.

Claim was filed for 12 hours pay at the time and one-half rate, alleging that one of the members of the gang that worked was junior to Claimant Bradshaw, and that Carrier was obligated to use the senior man for such service.

The claim presents the question of whether Carrier was obligated to call Claimant to perform rest day service when part of his Signal Gang, including one junior member was used at a derailment on Saturday, June 23, 1956. In support of the Employees position they cite Rule 16 paragraph (d):

"(d) When overtime service is required of a part of a group of employees who customarily work together, the senior available employees of the class involved shall have a preference of the overtime if they so desire."

It is true that Rule 16(d) confers upon the senior member of a class of employees the general right to overtime work. However, this right is not absolute, rather, it is qualified by the recognized right of an employee, be he a junior or senior employee, to perform overtime service, when such service arises out of work that he is performing at the time.

We quote from Award #5346 -- Referee Robertson:

"Despite Carrier's contention to the contrary, it is well settled by awards of this Board that even though there are no specific rules in the Agreement covering the situation, seniority is the essence of the Collective Agreement and that it applies in determining preference to overtime work of a given class (see Awards 4200, 4531 and others). It is also a well-established principle that overtime work arising out of a particular position belongs to the occupant of that position. The two principles are not in conflict. The first is merely qualified to that extent by the second. Inasmuch as the work of the position which Mr. Eldridge occupied was the operation of Crane No. W-3346 and that was the crane used on the Sunday in question, the overtime would be properly assignable to him unless the Carrier

arbitrarily assigned that particular piece of equipment with its Operator to perform the work in question for the purpose of defeating the senior employe's right to preference for overtime work."

Thus, the controlling factor is whether junior employe Adkins was performing overtime work on Saturday June 23, 1956, which was related to the work he was performing on Friday, June 22, 1956.

It is impossible under this record to make a decision, as there is a total conflict between the parties as to what work the other members of the crew were performing on Friday, June 22, 1956.

The burden of proving the claim rested upon the Claimant by evidence sufficient to sustain every essential element of his claim.

See Awards 9963; Award 9630 and Award 2853.

The Employes have failed to prove this claim, and it must be and is denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1962.

DISSENT TO AWARD 10783, DOCKET SG-9799

The record unequivocally disclosed that Gang No. 10 was a group of employes who customarily work together; nevertheless, the majority, consisting of the Referee and the Carrier Members, have seen fit to make Claimant's presence with that part of the Gang that worked together on Friday a

prerequisite to his right to work overtime on Saturday. Patently, Rule 16(d) is not susceptible to such interpretation.

Award 5346, relied upon by the majority, did not involve a comparable situation in that none of the employees involved there were a part of a group of employees who customarily work together; neither did the agreement in that dispute contain a rule comparable to Rule 16(d) of this case.

Overtime service was required of a part of Gang No. 10. Claimant was available but was not given an opportunity to either accept or reject the overtime.

This Award instead of interpreting Rule 16(d) as written writes the rule out of the agreement; therefore, I dissent.

/s/ **G. Orndorff**
G. Orndorff
Labor Member