

**Award No. 12910**  
**Docket No. SG-12569**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Lee R. West, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**HUDSON AND MANHATTAN RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Hudson and Manhattan Railroad Company:

*On behalf of Signal Repairman John Gill for eight (8) hours' pay at one and one-half times the Signal Repairman's rate of pay account Carrier failed to call him for overtime work on his assigned territory on Saturday, February 20, 1960, in violation of Rule 16 (b) of the current Signalmen's Agreement. [Time Claim No. 158]*

**EMPLOYES' STATEMENT OF FACTS:** Prior to the time this dispute arose, Mr. George S. Cone had been regularly assigned to a Signal Repairman position with headquarters at 33rd Street, and Mr. John Gill had been regularly assigned to a Signal Repairman position with headquarters at Caisson No. 3. Brotherhood's Exhibit Nos. 1, 2, 3, and 4, attached hereto, are copies of bulletins that verify these assignments.

On Saturday, February 20, 1960, one of the Claimant's assigned rest days, the Carrier called Mr. Cone to perform overtime work at Caisson No. 3 from 12:00 Midnight until 8:00 A. M. On March 1, 1960, Signal Repairman Gill presented the following claim to Mr. A. D. Moore, Superintendent Signal System & Way:

*"Claim is hereby submitted for 8 hours at time and one-half rate for February 20th, 1960 when Signal repairman G. S. Cone was called in on his assigned rest day (Saturday) to perform overtime work at this location 12 midnight to 8 A. M.*

*I am the regularly assigned Signal repairman at this location (caisson No. 3) and was denied the overtime work in violation of rule 16B of our agreement."*

*Under date of April 5, 1960, Mr. Moore wrote the following letter of denial to Signal Repairman Gill:*

Subsequent to the event described, claimant by letter dated March 1, 1960, submitted a time claim, asserting that he was entitled to the overtime work because of his being regularly headquartered in the area where work was performed. Carrier, by letter dated April 5, 1960, rejected claim. The General Chairman of the BRS appealed the issue to Carrier's General Superintendent, who denied the claim by letter dated June 7, 1960.

**POSITION OF CARRIER:** At the time when an extra Signal Repairman was called in, it was contemplated that signal trouble might develop, but it was not known where this trouble might develop, or where the extra Signal Repairman would be employed. The extra man was called in to clear trouble throughout the line, and not to take over a particular assignment at a particular location. Only in the latter instance does the language of Rule 16 (b) have any applicability—indeed meaning—because that rule, by its own terms, refers to the employee at “such location” being given preference, and obviously means nothing if the extra employee is not to be assigned to a particular location. When an extra employee is called in, but it is not known at what location he will be employed, then it is obvious that Rule 16 (b) cannot be applied. This is not a case of the Carrier refusing to apply the governing rule. Rather, the Organization has cited a rule, which by its own terms, cannot be applied.

The Organization has demanded that claimant be compensated at the time and one-half rate. Although the claim is without merit, and claimant should receive no compensation, it should be noted that under no condition is a claimant entitled to penalty pay for work which he has not performed. See Third Division awards 6586, 6664, 6702, and 7242.

### CONCLUSION

Carrier submits that the employee's claim is without merit and should be denied.

**OPINION OF BOARD:** Normally, one Signal Repairman is assigned the 12:00 Midnight, to 8:00 A. M. tour on Saturdays and Sundays at Hoboken. Although headquartered at Hoboken, such Signal Repairman, may be assigned to duties at any location on the system. Due to flooding which occurred on Friday, February 19, 1960, the Carrier considered it necessary to supplement the regular Signal Repairman at Hoboken to cover expected signal trouble. Assigned to supplement the regular Signalman at Hoboken was G. S. Cone, senior Signal Repairman assigned to the 12:00 Midnight to 8:00 A. M. tour. He was directed to report on Saturday, one of his normal rest days.

During the above mentioned Saturday tour, Cone performed work at Caisson No. 3. This was within the system regularly served by the Signal Repairman headquartered at Hoboken on Saturdays and Sundays and which was being supplemented on Saturday, February 20, 1960 by Mr. Cone. During the week the location at Caisson No. 3 was regularly assigned to Claimant, Signal Repairman Gill. Gill now claims that he, instead of Cone, was entitled to the overtime work by virtue of Rule 16 (b), which reads in part as follows:

“When it is necessary to require work at overtime rates at any location, a regularly assigned employee at such location shall be given the preference for such overtime work, \* \* \*”

Claimant contends that the location of the trouble was ascertained prior to the assignment as being at Caisson No. 3 and that Rule 16 (b) requires the

Signal Repairman regularly assigned to that location be preferred as to overtime work.

Carrier denies that the location of the trouble was ascertained or fixed prior to the assignment. It is Carrier's contention that trouble was or could be reasonably expected throughout the system. Therefore, it is their position that they have the right to supplement the position headquartered at Hoboken, whose duties extend throughout the system, including Caisson No. 3 without violating Rule 16 (b). We agree. To hold otherwise would prevent the Carrier from assigning supplemental help until a definitely ascertainable area was damaged. We do not believe that Rule 16 (b) intended such a result.

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

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 Agreement has not been violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1964.