Award **No. 13520**

Docket No. SE13349

NATIONAL **RAILROAD ADJUSTMENT BOARD**

THIRD DIVISION

Kieran P. O'Gallagher, *Referee*

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the. Southern Pacific Company that:

(a) The Southern Pacific Company violated the current Signalmen's Agreement, effective April 1, 1947 (reprinted April 1, 1968, including revisions), when it failed and/or declined to apply Rules 13 and 70, or other provisions of the agreement, by not allowing the senior employe in a class the privilege of working overtime *in* seniority order on March 6 and 7, 1961, in operating snow spreader on the Cascade line.

(b) Mr. F. S. Shanbeck be *allowed* 14 hours at the overtime rate of Leading Signalman for March 6 and 7, 1961.

[Carrier's File: SIG 148-63]

EMPLOYES' STATEMENT OF FACTS: At the time this dispute arose, Mr. **F. S. Shanbeck was on a Leading Signalman position, and Mr. M. C. Vearrier on a Signalman position, on Signal Gang No. 4. As shown by Rule 74 of the current Signalmen's Agreement, Leading Signalmen get 6.44 per hour more than Signalmen. However, as shown by Rule 32, Leading Signalmen and Signalmen are in the same seniority class.**

For ready reference, we hereby list the seniority dates of these two men in the various classes in which they hold seniority:

	Class 5	Class 4	Class 3	Class 2
Shanbeck	8- *8-41*	10-16-41	7- *1-42*	
Vearrier	5-17-49	5-17-49	5-17-49	7- 6-54

On March 6, 1961, Carrier assigned Mr. Vearrier to operate a snow spreader, and he worked from 5:30 P.M. on **that day until 7:30 A.M. the next day — a total of fourteen (14) hours.**

Inasmuch as Mr. Shanbeck has more seniority in Class 3 than Mr. Vearrier, and was not given preference to this overtime work in accordance with Rule

The facts in this case establish beyond question that the incident forming basis of thk claim constituted an emergency which required the use of any and all qualified personnel available to keep Carrier's line open In the territory involved and that the use of Vsarrier was purely on this basis, and not in any way connected with his employment as a signalman nor with the agreement covering signalmen.

CONCLUSION

The claim in this docket is entirely lacking in merit or agreement support and Carrier requests that it be denied,

(Exhibits not reproduced.)

OPINION OF BOARD: On March 6, 1961 a severe snow storm occurred on Carrier's Portland Division in the Siskiyou Mountains which necessitated the assignment of a second spreader to clear the main line between Cascade Summit and Crescent Lake *and* the yards at both points. Clearly an emergency existed and as there were no Maintenance of Way employes qualified to man a snow spreader available, Mr. M. C. Vearrier. signalman on Gang No. 4, who, prior to his service as a Signalman served in the Maintenance of Way Department and was familiar with the operation of a spreader. It is uncontroverted that the Claimant. Mr. Shanbeck, while Mr. Vearrier's senior as a signalman had no experience in- the operations of a spreader. It is also uncontroverted that an emergency existed.

We must consider that the work in question was not generally recognized as signal work, and therefore not within the Scope of the Signalmen's Agreement.

The Organization urges that Rule 13 of the current agreement which says:

> "Where gang men are required to work overtime, the senior man in a class in the gang shall be given preference to such overtime work."

applies in this case. However, in the instant case we are confronted with the existence of an emergency which conferred upon the Carrier a much broader lattitude regarding seniority than that contemplated in the Rule cited above, and which justified the Carrier in 'the selection of a man experienced in the operation of the apparatus described in order to clear the main line with *the least possible delay. We must concur with Referee Carter in Award No. 4948, when he stated:

> "Where snow removal has become emergent, we have no hesitancy in saying that a carrier may properly augment its maintenance of way forces with employes of other crafts and, *if necessary,* with persons not previously within the employ of the Carrier."

In the circumstances found, we must conclude the Claim lacks the merits for a sustaining award, and must be 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1965.

LABOR MEMBER'S DISSENT TO AWARD 13520,
DOCKET SG-13349

The Majority seems to find some significance in the fact that the work involved was not within the scope of the Signalmen's Agreement. In this respect the Majority erred; the controlling factor, and the one by which the Majority should have been governed, is that both the Claimant and the junior employe who performed the work are under the same agreement and in the same seniority class. This Board, under a long line of well-reasoned decisions, of which the Majority was aware, has held that when a Carrier elects to call employes from an established seniority group to perform work of another group, there being no employes holding seniority in the other group available, it is required to take notice of the seniority rights of the men in the group called upon to perform the service.

Further error is committed by the Majority in assuming the role of rules writer. If it was the intent of the parties that the relevant portion of Rule 13 has no application in emergency situations, it would have been a simple matter to have so provided in the rule.

It is obvious from the cited portion alone that Award 4943 relied on by the Majority does not fit the case at hand.

G. Orndorff
Labor Member