Award No. 13566
Docket No. SG-12382

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

HUDSON & MANHATTAN RAILROAD COMPANY

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

> In behalf of Mr. M. Hobby, Jr., with headquarters at Hoboken, New Jersey, for seven (7) hours at the pro rata rate account Carrier assigning junior Signal Repairmen to perform overtime service on August 3, 1959. [Carrier's File: Time Claim No. 140]

EMPLOYES' STATEMENT OF FACTS: Mr. M. Hobby, Jr., is regularly assigned to a position of Signal Repairman with headquarters at Hoboken, New Jersey. The assigned hours of Signal Repairman Hobby's position are from 12:00 Midnight to 8:00 A. M., and the regular assigned work week is from Saturday through Wednesday, with rest days of Thursday and Friday.

On Monday, August 3, 1959, due to high tension trouble occurring in Tunnel B in the area of the Christopher Street Station, it was necessary that the Carrier assign Signal Repairmen on overtime to the trouble area. The particular area in which the trouble occurred was not a part of any Signal Repairman's territory, and the Carrier assigned the overtime work to two junior Signal Repairmen, Mr. R. Warwinsky and Mr. W. Forman, both having headquarters at Hudson Terminal with similar work hours as the claimant.

Inasmuch as the two junior Signal Repairmen were assigned overtime service in preference to the claimant, Signal Repairman M. Hobby, a senior employe, a time claim was submitted by Signal Repairman Hobby to Mr. A. D. Moore, Superintendent Signal System and Way, for seven (7) hours at the time and one-half rate for the overtime work performed by the junior Signal Repairmen Warwinsky and W. Forman on August 3, 1959.

The claim was denied by Mr. Moore in a letter to Mr. Hobby dated November 2, 1959, in which it was alleged that there was no basis for the claim.

The claim was subsequently turned over to General Chairman J. J. Reese, who appealed the claim to Mr. James C. Warren, General Superintendent, under date of November 10, 1959, as follows:

relieve the employe who has worked sixteen (16) hours, or to meet an emergency."

A study of this provision, which governed overtime assignments at the time the present claim arose, shows that in this connection, the Carrier was under no obligation to consider seniority. Subsequent to the date of the claim, the Organization and the Carrier entered into a Memorandum of Understanding (annexed hereto as Exhibit A), which became effective on August 15, 1960. This agreement provided that in awarding overtime, certain seniority principles were to be followed. If, as the Organization asserts, this was always the case, then there was no need for the subsequent agreement. However, this was not always the case. It is the subsequent agreement which now compels the Carrier to consider seniority in awarding overtime assignments. In view of the fact that at the time the claim arose, the Carrier had not agreed to base overtime assignments on seniority, it is respectfully submitted that the Organization's claim is without merit, and should be denied.

CONCLUSION

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

(Exhibits not reproduced.)

OPINION OF BOARD: On Monday, August 3, 1959, high tension trouble developed in Terminal B near the Christopher Street, N. Y., Station. To correct this problem, Carrier assigned Signal Repairmen R. Warwinsky and W. Forman on an overtime basis.

In behalf of Mr. M. Hobby, Jr., the senior Signalman, whose headquarters are at Hoboken, N. J., the Brotherhood makes claim that Carrier violated the Agreement when it assigned a junior Signal Repairman to perform the overtime service on August 3, 1959. It maintains that under the seniority principle, as contemplated by the Agreement in Rules 30 to 42, Carrier was obligated to give preference of overtime employment to the senior employe. It takes the position that seniority rights are unlimited and that unless the Agreement specifically designates that a junior employe be assigned overtime work, this work belongs to the senior employe. Moreover, it points out that although senior employes were available and qualified, Carrier disregarded them and assigned the overtime to junior employes.

Carrier denies that the Agreement makes it mandatory that it give preference for such overtime work to the senior employe. It refers to Rules 11 and 16 as authority for the use of employes without regard to seniority order.

Article IV, Seniority Rules 30 to 42, upon which the Brotherhood relies, treats with the selection of positions based upon qualifications and fitness, establishment of a seniority date, force reductions, displacement rights, recall to service after furlough, and items related to the individual status on seniority rosters. These Rules do not, however, set forth provisions governing the right to overtime work. Also inapplicable to the instant dispute are Rules 11 and 16. Rule 11 pertains to situations where employes are taken away from their regularly assigned tour of duty. Signal Repairmen Warwinsky and Forman were not taken from their regular assignment to perform

the overtime service on August 3rd. Rule 16 concerns assignment of overtime to the regularly assigned employe at the location, and since there was no regularly assigned employe at the location, this Rule does not apply. Thus, neither party has presented a specific provision of the Agreement which is pertinent to the circumstances in the case at bar.

That the Agreement contains seniority provisions is not proof that seniority is to be observed under all circumstances. In the absence of a rule guaranteeing preference of overtime service to senior employes under the circumstances in the instant case, we do not infer that the parties contemplated such rights. Our position is consistent with a number of awards including Awards 8073, 8827 and 10288. Although we recognize the importance of the Seniority Rules and the need to respect them, we observe that the rights in question must exist under the Agreement before they can be impaired. We do not construe the Seniority Rules to require Carrier to give overtime work to employes having seniority at a location where there was no regularly assigned signalman. Moreover, under emergency conditions, in the absence of an express prohibition, Carrier has greater latitude in selecting its employes than under normal circumstances. See Awards 5766, 9394 and 12777.

We hold the Agreement was not violated and the claim is denied.

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 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 30th day of April 1965.

LABOR MEMBER'S DISSENT TO AWARD 13566, DOCKET SG-12382

The Majority errs in its holding to the effect that seniority prevails only to the extent there is a rule so providing, which is contrary to the principle of long standing that seniority in service applies to work that a Carrier has

performed on an overtime basis although not expressly so provided for in the Agreement. Awards 495, 2341, 2716, 2994, 4200, 4393, 4531, 5436, 9331, all of which were brought to the attention of the Majority. Awards 8073, 8827 and 10288, relied upon by the Majority, are clearly distinguishable in that they do not involve a comparable fact situation.

The Majority's assertion that under emergency conditions Carrier has greater latitude in selecting employes is ludicrous in light of the fact that Carrier neither pled emergency nor questioned the availability or the qualifications of Claimants.

G. Orndorff
Labor Member