

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award **Number** 21296  
Docket Number SG-21253

James C. **McBrearty**, Referee

(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company:

(a) On or about December 15th and **16th**, 1973, the carrier violated the current Signalmen's Agreement, when it assigned and/or permitted the work of repairing the signal pole **line at** various locations in the Arlington Heights, Ill. area, which is located on the Central Seniority District to Mr. R. Deakin, Signal Mmr. at Reedsburg, Wis., Mr. D. Hooker, Signal Mtnr. at Evansville, **Wis.**, and to Mr. J. **Mochenbacher, Ldr. Sigm.** Madison, **Wis.** These **employees** are assigned to the Northwestern Seniority District and hold no seniority **on** the Central Seniority **District** where the work was performed.

(b) Carrier now be required to compensate three (3) signal **employees** on the Central Seniority District the amount of **time** consumed by the Northwestern **District employees** whom should have been called under provisions of rule 15A and 20(a) account of this violation. Following are the names of the claimants.

R. J. Scheer.

R.N. **Cimochowski.**

T. Zubb.

Carrier's file: 79-8-174

OPINION OF BOARD: On December 13 and 14, 1973 due to a **severe** snow storm in the Chicago area, which dumped **two** (2) feet of snow on the ground, the Chicago area signalmen worked long hours in repairing pole lines. It was necessary to have **additional** repair **work** performed as a result of the snow storm, on Saturday and Sunday, December 15 and 16, 1973. The Signal Supervisor in charge of the Arlington Heights area, H. L. **Tomkins**, called Terminal District Signal Supervisor S. **Hoffer**, and requested the assistance of additional Central Seniority District Signalmen working under Mr. Hoffer, to work in the Arlington Heights area on the weekend. Signal Supervisor Hoffer called all of the signalmen whom he thought was available, but they turned down the opportunity to work on the weekend because they were exhausted from working long hours **on** December 13 and 14. The three claimants, who were signal maintainers assigned to the Suburban territory, were not called because Carrier felt they would be needed in case of an emergency in the Suburban territory, where they were assigned. Claimant Zubb was assigned to **Glencoe** (under the jurisdiction of Signal Supervisor **Tomkins**), Claimant **Cimochowski** was assigned to De Val (Des **Plaines**, Illinois), and Claimant Sheer

was assigned to the Lake Street Tower, in downtown Chicago. None of these three (3) claimants were called, because the Signal Supervisors felt these men would be needed on their own territory.

As a result, the **Signal** Supervisor used three (3) signalmen from the Northwestern Seniority District, **who** were assigned at **Reedsburg**, Evansville, and Madison, Wisconsin.

Claims are presented in behalf of the three (3) Central Seniority District signalmen, for payment on Saturday and Sunday at double **time** rate, on the basis of their contention that they should have been used on their seniority district before utilizing **employees** from outside the seniority district.

Rules in the present Agreement which have a bearing upon the present dispute are as follows:

**SENIORITY DISTRICTS.** 35. (a) Except as otherwise provided, referring to temporary transfers to other districts, seniority rights of **employees** are **confined** to **one** seniority district.

There shall be five seniority districts, as follows:

	Supvr.	Comm.	&	Signals	Chicago
Central	"	"	"	"	West Chicago
Illinois	"	"	"	"	<b>Boone</b>
Western	"	"	"	"	Milwaukee
Northern	"	"	"	"	Madison
Northwestern	"	"	"	"	

Seniority districts as now established will not be changed except by agreement between the system general **chairman** and the officer in charge of personnel.

**EMERGENCY WORK.** 20. (a) An **employee** assigned to a section, shop, or plant will not be required to perform work outside such section, shop, or plant not covered by his **assignment**, except in case of emergency **when** there are **no** other qualified signalmen available, and when so employed will be allowed additional **compensation** on basis of one-half regular hourly rate for time worked. Men will not be required to **remain** away from their section, shop, or plant **in** excess of three days. This rule does not apply to helpers or assistant signalmen who **may** be temporarily advanced to fill a temporary vacancy.

**CALLED** TO REPORT FOR WORK OUTSIDE REGULAR HOURS. **15.** (a) **Employees** released from duty and called to perform work outside of and not continuous with regular working hours will be paid a minimum allowance of two hours and forty **minutes** at rate and one-half. If held longer than two hours and forty minutes they will be paid at rate and one-half, computed on the actual minute basis. Time of **employees** called will begin at time called and will **end when** released at designated headquarters, unless release is accepted at another point, except that time in excess of one hour **from** time called to time reporting at designated **headquarters** or other agreed to point will not be included.

**SUBJECT** TO CALL. **16.** (a) **Employees** assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railway, and will notify the person designated by the management where they **may** be called. When such employees desire to leave their **home** station or section they will notify the person designated by the management that they will be absent, about when they will return, and, when possible, where they **may** be found. Unless registered absent, regular assignee will be called.

In reviewing the instant case, the Board finds that Rule 35(a) in setting up five (5) separate seniority districts gives employees within each of the districts first claim on any work performed within their particular district.

As was stated by this Board in Award 13832 dealing with language similar or related to Rule 35(a):

**Once** Carrier has decided that certain work should be done, however, the **employees** have rights which come into play and cannot be ignored. Among these rights is the right to be preferred over other employees for work to be performed in the district. If this right is ignored, the senior employees suffer a monetary loss. They have been deprived of the **earnings** which would have accrued from that work.

Next, looking at Rule 20(a) we **must** inquire whether there were indeed "no other qualified signalmen available."

Carrier contends that the three (3) Claimants were not "available" within the meaning of **Rule** 20(a), because they would be "needed in case of an emergency in the Suburban territory, where they were assigned." The record clearly shows the three (3) Claimants were **not** working at the time, however, and were not called first, even though they were in the Central Seniority District.

Several past awards of this Board have dealt with the interpretation to be given to the word "available."

In Award 20562 the Board said:

. . .the Carrier's assertion that most. of the Claimants worked on the claim date, plus overtime, and declined overtime during the **claim** period is no defense.

Similarly, in Award 16946 the Board noted:

The language of Rule 38(b) is clear that all the burning involved belonged to maintenance of way welders, with the single listed exception which is not here applicable, and its **assignment** of the work to other than a welder violated the Agreement. Claimant was available as he was **perform-**ing work where assigned by Carrier in the **immediate** vicinity.

Also, in Award 15497 the Board pointed out:

Carrier argues that the Claim should be denied because "there were no signal **employees** available to perform the work" and the **Claimants** were on duty and under pay at the **times** the involved work was performed.

These arguments are not valid. As we said in Award 13832 (Wolfe)

"The fact is that Claimants were working where Carrier has assigned then, hence were not only available but *Carrier was* availing itself of them."

**Finally**, in Award 13832 the Board explained:

Carrier's second defense, that Claimants were not available, is equally invalid. The fact is that Claimants were working where Carrier had assigned then, hence were **not** only available but Carrier was then availing itself of them. If they were not available at the time and place where the extra work was to be done, it was because Carrier chose not to assign them there.

Therefore, in line with our earlier awards, the Board **must** conclude that the Claimants in the instant case were indeed "available" within the meaning of **Rule** 20(a), and thus should have been called first, before bringing in **employees** from the Northwest Seniority District.

---

In light of the foregoing, the Board finds there is no need to delve into the additional question of whether two (2) feet of snow on the ground **is** an "emergency" within the meaning of Rule 20(a).

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 was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of November 1976.