NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21606

THIRD DIVISION Docket Number SG-21578

Robert J. Ables, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Cincinnati, New Orleans and Texas
(Pacific Railway company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al.:

On behalf of J. E. Petree, third step rate Assistant Signalman, Gang #1, J. Goff, Foreman, for five hours overtime account on January 29, 1975, Project Engineer J. E. Naylor sent J. E. Petree back to his headquarters and kept junior employee D. L. Smith and worked him on overtime until 11:00 p.m. /Carrier file: SG-92/

OPINION OF BOARD: As the senior man in the gang, the claimant would have been sustained in his grievance for overtime if the overtime agreement of the parties had not been modified by a subsequent side agreement of the parties.

In this case, the signalmen of one gang were split into two groups working at two locations about five miles apart. The claimant was senior to the signalman in the other group who was awarded overtime of five hours to complete a job that his group, as a whole, did not finish. The first group finished its work on time.

The evidence is that claimant Petree stayed at the same motel as the junior signalman who got the overtime work and that in going to his motel from the place where claimant worked, he passed the place where the employe worked who got the overtime, therefore there was no basis for an argument about convenience in the placement of the employes involved.

Rule 33 on overtime provides in pertinent part:

> "When overtime is to be worked by gang men, the senior qualified and available employee of a particular class in the gang will be given preference."

In accordance with this agreement, claimant should have been awarded the overtime work in issue and when he was not awarded the overtime work he should have been paid as though he had worked such overtime.

However, the parties agreed on April 9, 1974 that certain conditions would apply when signalman of the same gang were sent to work away from their gang. This agreement was reached as a result of two prior claims by signalmen who were sent to work away from their signal gang while junior employes remained with the gang and got overtime work. In short, the grievances were that junior men who stayed with the gang were getting overtime while senior men who were assigned work at another location lost the opportunity for overtime by being detached from the regular gang.

In correcting this situation, it was agreed, among other conditions, that:

> "If two or more employees are sent to work in a group, the senior employee in such group shall be paid the leaders rate of pay when no leading signalmen is in the group.!'

And,

> "In selecting employees to be sent away from a gang the senior employee(s) in the gang(s) out of class or classes needed (other than Foreman or Leading Signalman) shall be given preference to the assignment."

The object of this new agreement in the event a gang was split into groups was to give the senior man an opportunity to select the location at which he would work. As there was an opportunity for the senior man to be paid at the leaders rate of pay when no leading signalman was in the group, it is apparent that such senior employee had an opportunity to make more money by selecting the assignment at a different location. Similarly, the senior employe, by electing which group (of the same gang) he wanted to work with, could by reason of general knowledge of the circumstances make an educated guess as to which job of the two groups would likely result in overtime.

Claimant, being the senior man, having: elected to work at the location he did was getting the advantages provided in the side agreement of April 9, 1974. It cannot be argued that the agreement which provided such benefits to the senior man should or could at the same time insure, in all circumstances, that the election by the senior man would result in the best pay or, for that matter, the best work at the job site.

The claimant cannot have it both ways. Raving elected to work where he did, based on his seniority, with the opportunities for additional pay that flowed therefrom, he cannot at the same time be heard to complain when actual conditions developed that overtime had to be worked by the other unit. Management deserves something less than a straight jacket in which to accomplish its work.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1977.