

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24235
Docket Number **SG-24369**

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: {Brotherhood of Railroad Signalmen
{The **Long** Island Rail Road

STATEMENT OF CLAIM: "**Claims** of the General **Committee** of the Brotherhood of Railroad Signalmen **on** The **Long** Island Rail Road:

Claim No. 1. General Chairman file **SG-20-80.**

Claim on behalf of **Charles Harris** for 100 hours at **time** and one-half rate and all applicable **differentials** at the **prevailing** Signal Inspector rate of **\$11.313** per hour, account junior employees working overtime on various dates October 8 through November **19, 1980**, in violation of the current Signalmen's Agreement, particularly Rules **41** and **42**.

Claim NO. 2. General Chairman file **SG-21-80.**

Claim on behalf of **Louis Costa** for 62 hours at time and one-half rate and all applicable differentials at the prevailing Signalman rate of **\$10.997** per hour, account **junior** employees **working overtime** on various dates **November 5** through **21, 1980**.

Claim No. 3. General Chairman file **SG-22-80.**

Claim on behalf of **Rudolph Lentz** for **44.5** hours at **time** and one-half rate and all applicable differentials at the prevailing Signalman rate of **\$10.997** per hour, account junior employees **working overtime** on various dates **October 7** through **19, 1980**.

claim NO. 4. General Chairman file **SG-26-80.**

Claim on behalf of **Dominick Totondo** for 11 hours at time and one-half rate account junior Signal **Helper** working **overtime** on various dates **October 16** through **27, 1980**.

claim No. 5. General Chairman file **SG-28-80.**

Claim on behalf of **Kenneth Thuilot** for 3 hours at **time** and one-half rate account junior Signal Helpers working overtime on **October 21, 1980.**"

OPINION OF BOARD: Rules **41** and **42** of the Agreement are cited by the Brotherhood, as the basis for these claims. Rule **41** **is** the general rule dealing with overtime. Especially supportive of the claims, according to the Brotherhood, **is** Rule **42** which sets the conditions by which **pre-determined overtime will** be worked. All of the claims **allege** the Carrier did not use **senior** gang employees for pre-determined **overtime**.

The General Notice of October 2, 1980, on which the claim are based outlines operating regulations and conditions to prevail during a period of track renewal to be accomplished between October 13, 1980 and November 4, 1980 during regular working hours. The Notice specifies days and hours of its effectiveness but nowhere does it make any reference to overtime requirements. The Notice specified the track work would be done between 8:35 A.M. and 3:50 P.M., thus indicating overtime was not contemplated.

The overtime claimed is not for regular amounts each day but varies substantially from day to day. Specific assignments of overtime were worked depending on the progress of the work. As the track work developed each day determinations were made on the spot toward the end of the shift the amount of signal overtime needed to render the signal system operable after work for that day was finished.

Pre-determined means settled or decided in advance. Nothing in the General Notice supports the view that the overtime claimed was so anticipated. The provisions of Rule 42 are limited specifically to instances of pre-determined overtime and in the circumstances discussed above cannot be considered applicable.

Rule 41(g) sets up conditions for the assignment of overtime as follows:

"When it becomes necessary to assign an employee to an overtime assignment, such employee shall be selected based on the following considerations:

1. Incumbent of the position for which the overtime is required."

In the claims considered here the overtime was worked by incumbents in finishing work pending near the end of the shift. The number of hours varied considerably each day from 1 to 4 hours. Variations occurred also as to the days of the week when overtime was worked, and in some cases overtime was worked on Sundays, not a regular work day. These facts demonstrate conclusively that in no manner can the overtime claimed be considered pre-determined as required by Rule 42.

Award No. 37 of Public Law Board No. 1660 sets forth the principles involved here as follows:

"Absent a specific contract rule that provides that seniority shall be applied on an absolute basis, it was neither improper or unfair for the Carrier to allow the incumbent of the position to work overtime on his job rather than assign the overtime work to a senior employee who was the incumbent of a different position."

In the light of the evidence as reviewed above it is the Board's view that Rule 42 was not applicable in the assignment of overtime as covered by the five claims in question. On the contrary, the evidence fully supports

action of the Carrier in assigning the **wartime** in accordance with the requirements of Rule **41(g)**. For these reasons it is the determination of the **Board** that the **claims** be rejected.

The **above** considerations apply generally to each and all of the five **separate** claims. However, **in** the **claim** of Charles Harris there was also a special **consideration**. He **worked** under a special **agreement** dated **November 27, 1978** which set up certain conditions **which** took **into** account his epilepsy disability. He **was** assigned to **Signal Gang 53** with the understanding he was precluded from any **duties** which involved operation of **company** vehicles or the **performance** of any critical non-laterrruptable **tasks** except **under direct supervision** with **respect** to the latter. The **overtime** claimed by **Mr. Harris** would have been such he would have been **working** alone or may have necessitated **his** operating a company vehicle, in direct violation of the **Special Agreement of November 27, 1978**.

In the **claim** of **Mr. Louis Costa**, the **circumstances** were set forth in the Chief Engineer's letter of December 8, **1980**, as follows:

"The facts in this instance **are** that **Mr. Costa** was originally assigned to the crew **working** the welded rail job on the **Montauk Branch**, between **Sayville** and **Babylon**. **His** work habits were such that he was given another assignment where he could be **more** closely supervised. **This** was the result of **Mr. Costa** **sitting in** a vehicle during regular **working** hours rather than doing his **assigned** work."

The action by **supervision** in response to witnessing **Mr. Costa** absent from his assigned **duties** and **sitting in** a vehicle was not disciplinary **in** the sense of suspension or dismissal as provided in Rule **48**. Rather, it was a logical **supervisory** step **in** placing him **on** a job where he could be **more** closely watched, a **precautionary measure** to prevent **loafing** on the job. It may be **considered** that this change **in assignment** was **unfortunate for him in that it** removed him **from** the welded rail job where he **may** have benefited **from some** of the **overtime** in **question**. But we must recognize that his transfer to another assignment was the result of his own misconduct; **as well within** supervisory authority and not **in violation** of Rule **48**.

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 **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 not violated.

A W A R D

Claim **denied.**

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third** Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this **14th** day of March **1983**.

