

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24283
Docket Number SG-24222

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
{ Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (Pacific Lines):

On behalf of Leading Signalman L. E. Woodford, West Colton, for three hours at the time and one-half rate account not called and used on an overtime trouble call March 24, 1980, in violation of Section 12(b) of the Vacation Agreement, and Rule 72 of the Signalmen's Agreement." (Carrier file: SIG 148-310)

OPINION OF BOARD: This claim arises from the failure of Carrier to call Claimant, Leading Signalman L. E. Woodford, for three hours overtime work on March 24, 1980. For the week of March 24, 1980 to March 28, 1980, Mr. J. Richardson, regularly assigned to a Signal Maintainer position at West Colton, California, was relieved from duty account of vacation time off. During his absence, his Signal Maintainer position was filled by Leading Signalman G. G. Readman. Readman was headquartered at Beaumont, California, some twenty-five miles from West Colton. In addition to Readman's normal forty hour week, he also accepted an overtime call for three hours' work on March 24, 1980 from 3:30 p.m. to 6:30 p.m. There, Readman replaced a damaged signal lens broken by vandals on his maintenance district.

As a result of Readman's overtime call, the Organization filed this claim alleging that Claimant, who is headquartered at West Colton and is senior to Readman, should have been offered the overtime work. In the Organization's view, Carrier's failure to call Claimant for the overtime work violated Section 12(b) of the Vacation Agreement. That section provides:

"(b) As employees exercising their vacation privileges will be compensated under this agreement during their absence on vacation, retaining their other rights as if they had remained at work, such absences from duty will not constitute 'vacancies' in their positions under any agreement. When the position of a vacationing employee is to be filled and regular relief employee is not utilized, effort will be made to observe the principle of seniority." (emphasis supplied)

The Organization asserts that Carrier made no effort to observe seniority when it offered Readman the overtime work on March 24, 1980 instead of the Claimant. In fact, the Organization notes, Claimant was headquartered at the same place as the vacationing incumbent, while Readman was headquartered some twenty-five miles away. Thus, according to the Organization, Claimant would have more easily performed the overtime work.

Furthermore, the Organization points out that Carrier simply asserted that it "felt that the requirements of the service would be better utilized by using Readman in preference to Claimant". In the Organization's view, Carrier's "feeling" can hardly be deemed an effort to observe seniority. In addition, the Organization contends that since Carrier's preference for Readman over Claimant is an affirmative defense, Carrier has the burden of proving that Readman should have been preferred. Here, according to the Organization, Carrier has offered no evidence to support this contention.

Thus, the Organization maintains that Carrier failed to make an effort to observe seniority and further failed to justify its reasons for not observing seniority in this case. Therefore, the Organization asks that the claim be sustained and that Claimant be compensated for three hours at the time and one-half rate in effect on March 24, 1980.

Carrier, on the other hand, asserts that it made an effort to observe seniority in this case. First, Carrier notes that Readman was the senior available employee to perform vacation relief during the week March 24, 1980 to March 28, 1980. This is so because Claimant, though senior to Readman, was unavailable during that period since he was performing service as a Signal Foreman prior to and during the period of the claim.

Carrier also argues that it made more sense to offer the overtime work to Readman since he already had been assigned the vacation relief work. Finally, Carrier claims that it would have been very difficult to replace Claimant, who was acting as a Signal Foreman during the period in question, if he had been assigned to perform any of Richardson's work during the period of March 24, 1980 to March 28, 1980. For these reasons, Carrier contends that it did make an effort to observe seniority in this case and that, accordingly, the claim should be denied.

This dispute centers on the last sentence of Section 12(b) of the Vacation Agreement. That sentence requires that Carrier make an effort to observe the principle of seniority when assigning work of this kind. We believe Carrier did make such an effort here.

First, Carrier did observe the principle of seniority by employing the senior available employee - Readman - to fill Richardson's position for the week he was on vacation. Second, while Claimant was senior to Readman, it was reasonable for Carrier to use the Signal Maintainer already on the job when overtime work became available on March 24, 1980.

Finally, we are persuaded that Carrier would certainly have had difficulty in replacing Claimant, who was acting as a Signal Foreman during the week in question, had it chosen to assign him to perform any or all of Richardson's work during that time. Thus, we conclude that under these circumstances Carrier did make an effort to observe the principle of seniority. Accordingly, the claim must be 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 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

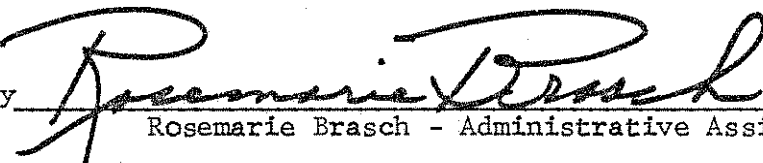
That the Agreement was not violated.

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 31st day of March 1983.