

The Third Division consisted of the regular members and in addition Referee John B. **LaRocco** when award was rendered.

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

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

Claim No. 1. Carrier file: 406-64-A

On behalf of K. A. Reagan and **G. Howard**, Signalman, for nineteen hours' overtime pay account on August 19 and 20, 1983, Carrier used junior me" from the shop gang for overtime work.

Claim No. 2. Carrier file: 406-63-A

On behalf of R. **Ramos**, Signalman, for thirty-three and one-half hours' overtime pay account on August 19, 20 and 21, 1983, Carrier used a junior man from the shop gang for overtime work.

Claim No. 3. carrier file: 406-66-A

On behalf of K. L. **Simms**, Signalman, for fourteen hours' overtime pay account on August 21, 1983, Carrier used a junior man from the shop gang for overtime work.

Claim No. 4. carrier file: 406-65-A

On behalf of S. L. **Salazar**, Leading Signalman, for fourteen hours' overtime pay account on August 20, 1983, Carrier used a junior man" from the shop gang for overtime work. [Carrier file: 406-64-A] "

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the **employee** or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The parties consolidated four claims, which they separately progressed on the property, into a single case for presentation to this Board because the claims involve common issues of fact and contract interpretation. While each claim concerns an alleged violation of Rule 307, it is best to analyze this case **in** chronological fashion. The facts are slightly different on each claim date.

On Thursday, August 18, 1983, Hurricane Alicia caused extensive property damage in the Houston-Galveston, Texas area. Some residents were without power or telephone service for several days thereafter.

On Friday, August 19, 1983, Claimants Reagan, Howard and **Ramos** protected **their** regular assignments at the Houston Signal Shop. During regular working hours, the Carrier assigned three Shop Signalmen junior to Claimants to help a Signal Maintainer repair hurricane damage to **the Carrier's** signal system at various locations throughout the Houston area. After their regular shift, the junior Signalmen worked a substantial number of overtime hours. Claimants did not perform any overtime work on August 19, 1983. The Carrier did not assign Claimants to perform the overtime work for two reasons. First, the overtime work flowed from and was contiguous to the junior Signalmen's regular duties for that day. Second, the Carrier wanted to avoid the costs and loss of time it would have incurred if the Signal Maintainer had interrupted his work to travel back to the Shop (to release the junior workers) and returned to the field work site with Claimants. The Carrier did not challenge Claimants qualifications to **perform** the overtime work.

Rule 307 reads:

"Where Signal, Shop or Maintenance gang employees are required to work overtime, the senior employee in a class in the gang who can perform the work shall be given preference to such overtime work."

On this property, Public Law Board No. 3345 interpreted and applied Rule 307 **in a** analogous situation. In Award No. 3, Public Law Board No. 3345 decided that Rule 307 contains express, mandatory language that the Carrier assign overtime work to the available senior worker provided he was qualified. Specifically, the Board did not find any implied exception based on economic efficiency. Under the doctrine of stare decisis, we are bound by a definitive interpretation of the same rule between the **same** parties. Even though the overtime was a continuation of the junior employees' regular duties and it would have been cumbersome to exchange Claimants for the junior employees at the end of the shift, Rule 307 obligated the Carrier to give Claimants a preferential opportunity to work the overtime. Moreover, the Carrier could have foreseen (when it originally assigned the junior Shop Signalmen to assist the Maintainer) that the assignment would entail overtime work. It was **aware** that the hurricane had caused extensive damage to its signal system necessitating lengthy repair work. Thus, the Carrier could have avoided the economic inefficiency associated with exchanging employees at the conclusion of the

August 19, 1983, shift simply by assigning Claimants to work with the Maintainer at the start of their tour of duty. See Public Law Board No. 3345, Award No. 5. Claimants are entitled to be compensated for the number of overtime hours worked by the three junior employees. Since Claimants are being compensated for time not worked, they should be paid at the straight time rate.

August 20, 1983, and August 21, 1983, were rest days for Claimants Reagan, Howard, Ramos, Simms and Salazar. Shop gang employees with less seniority than the four Claimants performed overtime service to repair hurricane damage. The Carrier asserted that it unsuccessfully attempted to contact Claimants Reagan, Howard, Ramos and Simms. It did reach the residence of Claimant **Salazar** but he was not home and did not return the Carrier's telephone call. On the other hand, Claimants Reagan, Howard, Ramos and Simms tendered written statements attesting that they were home on the dates in question, and that their telephones were functioning. The Organization shoulders the burden of proving the salient facts underlying its claim. When confronted with an irreconcilable conflict over a material fact, we must resolve the conflict against the party holding the burden of proof.

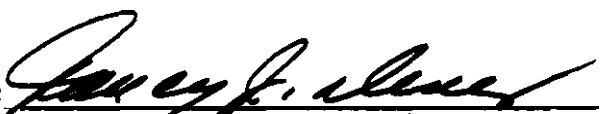
To reiterate, the claims covering overtime work performed on August 19, 1983 are sustained to the extent specified in our Findings. The remainder of the claims are denied.

A W A R D

Claims sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.