

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30883
Docket No. SG-30973
95-3-92-3-797

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation (CONRAIL)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (CONRAIL):

Claim on behalf of M.J. McDonagh for payment of four hours at the overtime rate account Carrier violated the current Signalman's Agreement, particularly Appendix P, when it assigned a junior employee to fill a vacant position on April 1, 1991, at Selkirk Yard."

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 employee 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.

Claimant is assigned to the relief position of Assistant Inspector on Carrier's Selkirk Trouble Desk. His assignment is from 3:00 PM to 11:00 PM on Monday and Tuesday, 11:00 PM to 7:00 AM on Wednesday and Thursday, and 7:00 AM to 3:00 PM on Sunday.

On Monday, April 1, 1991, the 7:00 AM to 3:00 PM shift on the Selkirk Trouble Desk was not filled by the regularly assigned employee. Carrier filled the position by assigning an employee with regular rest days of Monday and Tuesday to work the first half of the shift, and using Claimant to fill the second half.

The Organization claims that Carrier violated Appendix P of the Agreement when it utilized a junior employee to fill a vacant position and deprived Claimant of the opportunity to perform the relief work required on the position. It asserts that in accordance with Appendix P, overtime is assigned to employees based on seniority. Appendix P provides that employees will be called for overtime from the established calling list and that employees with common assignments "will be listed in class seniority order."

Therefore, the Organization asserts that the well established principle of seniority is to be applied as the determining factor in the assignment of overtime. It asks that the claim be sustained.

Carrier maintains that it did not violate the Agreement by splitting the overtime assignment between the Claimant and the junior employee. It asserts that neither Claimant nor the junior employee was available to cover the complete eight hour vacancy without violating the Federal Hours of Service Law, which restricts signal employees to 12 hours on duty within any 24 hour period.

Carrier further argues that Trouble Desk positions are covered by the Hours of Service Law by the virtue of the fact that the positions assist in the maintenance of signal systems. Accordingly, and for these reasons, Carrier asks that the claim be denied in its entirety.

After a review of the evidence, we conclude that the claim must be denied. Appendix P is specific. It is "a procedure for calling C&S Department employees for trouble involving maintainer's work outside their regular working hours." The evidence indicates that the work in dispute was not "maintainer's work." Therefore, any reference to Appendix P does not apply here.

We note that Appendix P was the only Rule cited by the Organization. As we have found that Appendix P does not apply, we must deny the claim.

AWARD

Claim denied.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 10th day of May 1995.