

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31426
Docket No. SG-32000
96-3-94-3-334

OT - failed to call in empl /
- what might happen is not
material - have to cross that
bridge when we get to it .
- Has. of service -

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway Signalmen
(The Belt Railway Company of Chicago

STATEMENT OF Claim:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Belt Railway Company (BELT):

Claim on behalf of W.F. Helmbold for payment of eight hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 17(a), when it used a junior employee instead of the Claimant to perform overtime service on January 9 and 10, 1993, and deprived the Claimant of the opportunity to perform the work."

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 was employed by the Carrier as a signal maintainer. On January 9, 1993 Claimant was observing one of the rest days of his assignment, with January 10, 1993 being a work day. As a result of a heavy snow storm the Carrier required maintainers to work overtime on January 9. Claimant was not called, but a maintainer junior to the Claimant was called.

The record is not in dispute. The Claimant was rested and available to work and an employee junior to the Claimant was called instead. Rule 17(a) of the Schedule Agreement which is applicable in this case reads as follows:

"Rule 17(A)

2. For extra work outside the Hump, and not continuous with regular assignments, the regularly assigned road maintainers will be called first, in seniority order. Then regular road maintainers on their off days, next signal gang members, and then Hump Maintainers in seniority order. Finally by Signal employees in seniority order."

The Carrier concedes, if the overtime could have been completed in four hours, the Claimant would have been called. However, the Carrier argues the overtime was needed because of a major snow storm. It knew the work required of whomever was called would be in excess of four hours. Because the Claimant was scheduled to work the next day it also knew, if the Claimant was called on January 9, the Hours of Service Rules would prevent the Claimant from working on January 10.

While the Board fully understands the dilemma the Carrier was in, the Agreement does not permit it to speculate on what might happen at a later time. The Carrier violated the Agreement when it did not call the Claimant to work overtime on January 9, 1993.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of March 1996.