

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31782
Docket No. SG-32029
96-3-94-3-406

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation
((AMTRAK)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corporation (NRPC-S):

Claim on behalf of M. Mazenkas for payment of three hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Appendix 'F', when it assigned another employee to perform overtime service on the Claimant's territory on January 5, 1993, and denied the Claimant the opportunity to perform the work. Carrier's File No. NEC-BRS(S)-SD-630. General Chairman's File No. RM2452-120-693. BRS File Case No. 9290-NRPC(S)."

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 or 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 were given due notice of hearing thereon.

Claimant in this case was regularly assigned as a Signal Maintainer on the first shift. On the claim date, a signal malfunctioned on the third shift. The signal malfunction was corrected by a Signal Maintainer who was regularly assigned to work on the third shift. The Signal Maintainer who performed the required service did so at the straight-time rate of pay.

The Organization argues that the provisions of agreed-upon APPENDIX "F" and the attendant guidelines thereto require the Carrier to utilize the APPENDIX "F" call list to perform any and all signal "trouble involving Maintainer's work." It contends that Section 8 of APPENDIX "F" so requires. The Organization cites Third Division Award 27181 in support of its position.

Appendix "F" and the attendant guidelines for allotment of overtime work read as follows:

"APPENDIX 'F'

AGREEMENT DATED JANUARY 30, 1986, BETWEEN THE NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) AND BROTHERHOOD OF RAILROAD SIGNALMEN PROVIDING A PROCEDURE FOR CALLING C&S DEPARTMENT EMPLOYEES FOR TROUBLE INVOLVING MAINTAINER'S WORK OUTSIDE THEIR REGULAR WORKING HOURS.

- 1. A form showing the information included in the attached sample will be used to record the calling and response to calls for work outside of employees' regular working hours.**
- 2. Subject to other provisions of this Agreement, a calling arrangement will be established by the Assistant Division Engineer C&S/ET and the Organization's designated representative jointly.**
 - (a) The calling arrangement will be subject to the concurrence of the General Chairman and the Director-Labor Relations.**

(b) Should the Assistant Division Engineer, C&S/ET and the Organization's designated representative be unable to agree upon a calling arrangement within 30 days after the effective date of this agreement, then the General Chairman and the Director-Labor Relations will establish the arrangement.

3. On the basis of the calling arrangement, the form (as attached) will be prepared by the Supervisor C&S and placed in the hands of the employees designated to make calls and record responses to calls for work. The names of the persons so designated will be furnished to the Local Chairman and the General Chairman.
4. All of the information called for on the form must be recorded at the time the employee is called.

Note: At the time the employee is called, he will indicate his Hours of Service status.

5. Qualified employees may have their names added to or removed from the list at their request if written notification is given to the Supervisor C&S forty-eight (48) hours in advance. Such employees must be able to report to the headquarters of the territory involved within one hour to call in the territory in which they have indicated a desire to be called.

Note: The one hour limitation will not apply to the regular assigned Signal Maintainer for the section involved.

6. The Signal Maintainer assigned to that position in the section involved will, if he has added his name in accordance with Item 5 above, be listed first on the calling list for his section. If more than one Signal Maintainer have the same responsibilities and territory, they will be listed in class seniority order.
7. Employees subject to call for work outside of their regular tour of duty under this Agreement must keep their name, address and telephone number on file with their Supervisor.

8. Employees will be called from the appropriate list for work in the order in which their names appear on the list.
9. A reasonable effort will be made to comply with the procedure outlined above but shall not be permitted to delay getting a qualified employee to report promptly at the point necessary to cope with the situation.
10. In the application of this understanding two calls will be made to the first six (6) employees whose names appear on the calling list. A second call will not be required where such employees are identified as not at home on the first call. One call will be made to other individuals on the list.

If an employee fails to respond to calls for service on five consecutive occasions, his name will be removed from the calling list and may be restored to the list only after he has complied with Item 5 above after having been removed from the list for a period of thirty (30) calendar days.

11. The forms referred to herein will be kept in the office where they are completed for a period of not less than three months and they will be available for review by the General Chairman and Local Chairman, B.R.S.
12. This agreement shall become effective upon execution and may be canceled by either party by not less than 60 days written notice to the other party."

GUIDELINES

"Emergency overtime is defined as work that is not known about more than 24 hours in advance or by Friday noontime in the case of weekend work. People will be called for emergency overtime from and in order of the emergency overtime list. If an emergency overtime situation requires, in the opinion of a supervisor, a crew to make repairs or an inspector for associated testing, those people will be called.

The emergency overtime list will be made up of persons requesting to be on that list. The emergency overtime list will be made up in the following order:

First, the maintainer of that maintenance section. Second, persons currently holding signal maintainer and signalman positions who hold signal maintainer seniority, listed in order of their signal maintainer seniority. Third, the section inspector. Fourth, persons currently holding assistant foreman positions who hold signal maintainer seniority, listed in order of their assistant foreman seniority. Fifth, persons currently holding foreman and inspector positions who also hold signal maintainer seniority, listed in order of their foreman/inspector seniority. Sixth, persons currently holding electronic technician positions who also hold signal maintainer seniority, listed in order of their electronic technician seniority."

The fact situation in this case is not in dispute. It is clear from the case record that there was no work performed at the overtime rate. The Board finds no fault with the Organization's position relative to the use of the APPENDIX "F" call lists in situations in which overtime work is required or performed. Third Division Award 27181 upon which the Organization relies is a good one. It just does not address a fact situation which is parallel to this case. There a junior Signal Maintainer was used on an overtime basis to the exclusion of a senior Signal Maintainer. Here the Maintainer work was performed at the straight-time rate by a Signal Maintainer who was on duty and under pay on his own regular assignment. There is nothing to be found in APPENDIX "F" or the attendant guidelines which precludes such use of an on-duty Signal Maintainer to perform Maintainer's work. The logic expressed in Awards 12 and 15 of Public Law Board No. 3932 is equally applicable in this case. "Claimant cannot claim a preference for overtime work that was never performed." This claim is, therefore, denied.

AWARD

Claim denied.

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ORDER

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 20th day of November 1996.