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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32564
Docket No. SG-33758
98-3-97-3-51

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: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (UP):

Claim on behalf of J.W. Witt for payment of eight hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Rules 4 and 10, when it used a junior employee instead of the Claimant to perform overtime work at North Platte, Nebraska, during unassigned hours on September 5, 1995. Carrier's File No. 960125. General Chairman's File No. 51103203. BRS File Case No. 10234-UP."

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 were given due notice of hearing thereon.

The dispute in this case is based upon an alleged violation of Agreement Rules 4 and 10 which read as follows:

"RULE 4 - BASIC DAY AND STARTING TIME

(a) Where one shift is worked eight (8) consecutive hours, exclusive of the meal period, shall constitute a day's work. Where two or more shifts are worked, eight (8) consecutive hours, including an allowance of twenty (20) minutes for lunch without deduction in pay, shall constitute a day's work. Eight (8) consecutive hours shall constitute a day's work for employees assigned as Maintainers pursuant to Rule 2(g) and (h), with meal period taken when possible, but not to exceed twenty (20) minutes.

(b) Where one shift is worked, or for the first of two or three shifts, the starting time shall be established between 6:00 a.m. and 8:00 a.m. For the second of two shifts, or the second and third of three shifts, the starting time shall not be earlier than 12:00 o'clock noon or later than 12:00 o'clock midnight. Starting time shall not be changed temporarily or permanently without at least thirty-six (36) hours' notice to employee affected.

(c) In instances when maintenance forces or gang employees are required to work in conjunction with track forces, their starting time may be changed temporarily for periods of up to ten (10) working days between the hours specified in Paragraph (b) hereof, however, such temporary change shall be limited to not more than three (3) times in any calendar year. In the event the starting time of an employee is permanently changed more than one (1) hour, the employee affected may, within ten (10) days from date of notice of change in starting time, upon five (5) calendar days' advance notice, exercise seniority rights as provided in Rule 24 hereof, and other employees affected may exercise displacement rights in the same manner. This shall not be applicable when seasonal changes in starting times are made on a division or subdivision basis.

(d) In determining and establishing starting times, repair and/or construction gangs and the consolidated signal shop shall be considered independently of regular maintenance forces.

(e) Starting times other than those provided herein may be arranged by mutual agreement between the General Signal Supervisor and the *Local Chairman for the territory involved, or the Superintendent of Shop and Shop Steward*, with the approval of a majority of the employees affected."

"RULE 10 - OVERTIME

(a) Time worked by hourly-rated employees preceding or following and continuous with a regularly assigned eight-hour work period shall be computed on actual minute basis and paid for at time and one-half rates, with double time computed on actual minute basis after sixteen hours of work in any twenty-four hour period. In the application of this Section (a) to new employees temporarily brought into the service in emergencies, the starting time of such employees will be considered as of the time that they commence work or are required to report.

(b) Hourly-rated employees required to work continuously from one regular work period to the same work period the following day shall receive double-time at the basic hourly rate during the second regular work period until relieved. In the case of employees required to work continuously from one regular work period to another, relief from work during the second regular work period will not be considered as suspension of work during regular assigned work period for the purpose of absorbing overtime within the intent of Rule 7.

(c) Hourly-rated employees used in place of regular employees, or in place of regular incumbents of relief positions, will be paid at the rate of time and one-half for work performed on such relieving employee's rest days. Unassigned employees who are not assigned to a regular work period who are called for special or emergency service will be paid at the overtime rate for all time worked outside of the hours of regular assignment of the

regular assigned employees with whom used, or the regular hours of the employee regularly assigned to the section on which used.

(d) When a portion of a gang is required for overtime service, the senior employees of the classes of the gang involved shall, if available, have preference to such overtime work or service.

(e) Monthly rates of positions listed in Rule 39(a) cover all services rendered, except as provided herein. The pro rata hourly rate for such positions shall be determined by dividing the monthly rate by 213 hours. In computing future wage adjustments for monthly-rated employees 213 hours shall be used as the multiplier.

Employees compensated on a monthly basis shall be assigned one regular rest day per calendar week, Sunday, if possible, and rules applicable to other employees covered by this agreement are applicable to service on such day. Ordinary inspection, construction or maintenance work will not be required on the sixth day of the work week, and employees directed to perform such work shall be compensated therefor at the applicable overtime rate. Employees required to perform service on a designated holiday will be compensated therefor pursuant to Rule 11.

When signal gangs or consolidated signal shop forces are required to work in excess of a normal eight-hour day for three or more days in the first five days of the work week, the Foremen shall be paid overtime at their hourly rate for actual time worked in excess of eight (8) hours per day by the gang or force they supervise that week. Monthly-rated employees directed to perform service in excess of 213 hours in any calendar month shall receive overtime at the applicable rate for hours in excess thereof, excluding compensated overtime hours."

The Claimant in this case was regularly assigned to the first shift Retarder Yard Maintainer position which worked from 8:00 A.M. to 4:00 P.M., Monday through Friday, at North Platte, Nebraska. The Maintainer operations at this 24-hour location consists of three regular assigned shifts daily. On the claim date, Monday, September 5, 1995, which was one of the paid holidays designated in Agreement Rule 9 - REST DAY AND HOLIDAY SERVICE, Carrier exercised its prerogative to blank the first

and second shift Maintainer positions. The incumbents thereon were paid eight hours at their regular pro-rata rate as required by Rule 9. The third shift Maintainer position was worked on the holiday, and the incumbent thereon was, in accordance with the requirements of Rule 9, paid at the time and one-half rate for the work performed on the holiday.

The Organization in their progression of the instant claim argued that the third shift position which was worked on the holiday was an "overtime opportunity" which should have been offered to the Claimant under the provisions of Rule 10(d) because he was the senior employee. During the on-property handling of the dispute, the Organization argued that under Rule 4 the Carrier was "obliged by Agreement to work one shift with a starting time between 06:00 a.m. and 08:00 a.m." However, in their presentation to the Board, the Organization did not pursue this argument and, in fact, did not explain how the provisions of Rule 4 were involved in this situation.

The Carrier's position centered on the argument that there was no "overtime" work per se involved in this dispute. Rather, it contends that the provisions of Rule 9 were properly applied; that the first and second shift positions were properly blanked on the holiday; and that the time and one-half payment to the third shift position was an application of the holiday pay agreement, it was not "overtime" work and it did not create a penalty situation.

After reviewing the language of the Rules which have been cited in this case, the Board finds no justification for the claim as presented. The three-shift operations which existed at the location in question was not changed because of the holiday. The senior employee had the benefit of his greater seniority by owning the first shift position. His seniority rights were not violated because his regular position was blanked on the holiday. There was no "overtime" work as contemplated by Rule 10 performed in this situation. Neither was there any violations of either Rule 4 or Rule 10 when the regular third shift position was worked on the holiday. The claim as presented is 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 29th day of April 1998.