

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32639
Docket No. SG-33317
98-3-96-3-739**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen 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 W.J. Fisher for payment of 24 hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Rules 10 and 18, when it used a junior employee instead of the Claimant to perform overtime work on January 14 and 15, 1995, and deprived the Claimant of the opportunity to perform that work. Carrier's File No. 950302. General Chairman's File No. 49108677.2. BRS File Case No. 9951-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.

There is no dispute with regard to the following set of facts: During the period of January 9-15, 1995, a major storm struck portions of Northern California, including the Sacramento and Keddie areas. The storm resulted in flood conditions, and all available signal employees were called to assist in repairing the damages. Two of the employees called were monthly rated Signal Inspectors, W. J. Fisher (Claimant) and R. A. Chaplin. Mr. Chaplin, who is headquartered in Winnemucca, Nevada, was assigned to the Keddie, California area, which is located approximately 100 miles from Sacramento. Mr. Chaplin worked at Keddie on January 11 to 13, and also on January 14 and 15. Claimant, who is senior to Mr. Chaplin and headquartered in Sacramento, worked extra hours on January 9 to 13 in the Sacramento area but not on January 14 and 15.

On February 17, 1995, the Organization submitted a claim on behalf of Mr. Fisher contending that Carrier violated Rules 10-OVERTIME and 18-SENIORITY when it assigned Inspector Chaplin to perform overtime work on January 14 and 15, 1995, on "Claimant's territory." The Organization asserted that Carrier should be required to pay Claimant for 24 hours at the time and one-half rate for his "loss of work opportunity." Relying upon the above Agreement Rules and "extensive" arbitral precedent, BRS maintained that Carrier was obliged "to observe seniority" but did not do so when it assigned junior employee Chaplin to work at Keddie on January 14 and 15 when Claimant was available for work.

In its denial, Carrier noted that Claimant and Mr. Chaplin had been called to perform emergency work in two distinct regions: Mr. Chaplin worked in the Keddie area, while Claimant worked some 100 miles away in the Sacramento area. Carrier asserts that there is no requirement in any of the cited Rules which would require an employee already working on a different project at a distant location to be sent home so that a senior employee could travel to that distant location to complete the work.

The evidence of record shows that Claimant was called to work emergency repairs in the Sacramento area on January 9, 1995, and worked continuously through January 12, 1995. When additional help was needed at Keddie, California, 100 miles away, due to flooding, Mr. Chaplin was called to assist on January 11, 1995, two days after Claimant had been called and while Claimant was still working in the Sacramento area. As the senior employee in the area, Claimant was properly called first, and subsequently, as additional manpower was required, other junior employees properly were called out to work. The two work areas are 100 miles apart, and two separate

groups worked two separate projects to repair the storm damage. The overtime hours were not scheduled, but were worked as needed, and the Keddie emergency repairs Mr. Chaplin was working on were not completed until two days after those in Sacramento had been finished by Mr. Fisher.

In our considered judgement the seniority Rules relied upon by the Organization were complied with by Carrier in the unique circumstances presented. The Organization did not refute that the circumstances at issue constituted a true emergency. Claimant and Mr. Chaplin were not working on the same gang, nor were they part of the same project. Given the emergency situation, it was not incumbent upon, nor would it have been good judgement, for Carrier to have required Mr. Chaplin to stop performing the emergency work in Keddie so that Claimant could travel 100 miles from Sacramento to perform the emergency work at Keddie which Mr. Chaplin was already performing at that site. Based on the foregoing, this claim is denied.

AWARD

Claim denied.

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 July 1998.