

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32705
Docket No. SG-32808
98-3-96-3-133**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Terminal Railroad Association of St. Louis**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Terminal Railroad Association of St. Louis (TRRA):

Claim on behalf of C. E. Satterfield for payment of two hours and 40 minutes at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Article V, Section 1, when it called a junior employee instead of the Claimant to perform overtime work on January 8, 1995. General Chairman's File No. 95-47-A-S. BRS File Case No. 9759-TRRA."

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.

At 1:20 A.M. on January 8, 1995, in response to a problem with a signal system, Carrier called out second shift Signal Maintainer Paul Anderson on an overtime basis to repair a broken wire. Anderson, who had been released at midnight after his shift on January 7, was junior to Claimant Satterfield, a first shift employee on his regular day off.

The Organization maintains that the Claimant was available for overtime and should have been called. Carrier's action, it argues, violated the general seniority provisions of the Signalman's Agreement, which read:

**"ARTICLE V.
Seniority**

Section 1. Seniority shall consist of rights based on relative length of service of employees as hereinafter provided and shall extend over the entire property of the Terminal Railroad Association of St. Louis, including leased and operated lines."

In response, the Carrier asserts that the controlling rule here is found in the following provisions, excerpted below:

**"ARTICLE II
Hours of Service**

Section 8 (a) Overtime Provisions - Work in excess of 4 straight time hours in any workweek shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another or to or from a furloughed list, or where days off are being accumulated under Paragraph (g) of Article III.

* * *

(b) Work performed by employees on their assigned rest days . . . shall be paid for at the applicable punitive rate.

Section 9. The hourly rates named herein are for an eight (8) hour day. All service performed outside of the regularly established working period shall be paid for as follows.

Overtime hours either prior or to [sic] continuous with regular working period shall be computed on the actual minute basis and paid for at the rate of time and one-half. . . .

Section 10. Employees released from duty and notified or called to perform service outside of and not continuous with regular working hours will be paid a minimum allowance of two hours and forty minutes at the time and one-half rate. . . ."

Carrier contends that for many years prior to the submission of this claim, its normal practice had been to cover a vacant third shift position by working the second shift employee from midnight to 4:00 A.M., to a maximum of four hours, and then bringing in the first shift Maintainer four hours early at 4:00 A.M. It argues that it relied on this practice when it called out second shift Maintainer Anderson at 1:20 A.M. rather than Claimant, a first shift employee on a normal rest day. In sum, Carrier insists that covering the trouble call in such manner violated neither the general seniority Rules nor the hours of service provisions, and that the Organization's position in this dispute represents a sudden and unannounced change from a practice that had worked well and in which it had long acquiesced.

From the Board's examination of the Rules relied upon by both the Carrier and the Organization, we conclude that none directly addresses the situation which confronted them on January 8, 1995. The Rules of service provisions clearly contemplate the calling of employees outside their regular hours for overtime assignments, but do not establish a system for distributing overtime. Nor do the general seniority Rules provide any explicit guidelines.

The Organization cites Third Division Award 30833 in support of its position. There the Board rejected a carrier's attempt to rely on the absence of specific restrictions in the agreement to justify its covering overtime out of seniority order. In that case, the Board's determination rested upon an express finding that there was no showing of "... an existing practice to disregard seniority in overtime."

Award 30833 professes unarguable principles. Seniority has been recognized as the life blood of the agreement for far too long to need elaboration here. Even in the absence of specific rules, it is the cornerstone of collective bargaining, and it normally governs access to premium assignments. But in this instance the settled exception acknowledged by Award 30833 is in play. Carrier asserts that there is an established

local practice of covering overtime as it did in this instance. On the basis of this record, and in the absence of any explicit rule governing the issue, if that contention is fact the Board would have an overriding reason for disregarding seniority. Conversely, if the Organization's position is credited, the senior employee was entitled to the overtime. Both arguments obviously call for the making of a record, and for scrutiny of it, for past practice defenses are often burdened with issues of knowledge, acquiescence, and other concerns.

This Board cannot resolve this conflict on the record before us. The Organization bears the burden of rebutting Carrier's assertion that the Agreement has been applied historically as urged. Assuredly, if Carrier's normal practice has been to call senior personnel for duty outside of and not continuous with regular working hours that fact can be documented. In the meantime, Carrier's assertion remains unrefuted. With the fact conflict unsettled on the property, and consistent with long standing precedent in this Division, therefore, the claim must be dismissed without prejudice.

AWARD

Claim dismissed.

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 19th day of August 1998.