

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33909
Docket No. SG-34193
00-3-97-3-758**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company (former Chicago & North
(Western Transportation Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago & North Western Transportation Co. (CNW):

Claim on behalf of D.E. Beck for payment of four hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Rules 15(d) and 16(a), when it called a junior employee instead of the Claimant to perform overtime work on July 12, 1996. Carrier's File No. 1025109. General Chairman's File No. S-AV-268. BRS File Case No. 1035 1 -CNW.”

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.

This claim filed on July 19, 1996, alleges that Carrier violated Rules 15(d) and 16(a) when it called a junior employee from Claimant's territory to work an overtime assignment dealing with a signal failure on an adjacent territory, rather than permitting Claimant to work overtime despite his being the senior man on duty for call on July 12, 1996, the date in question. On the property Carrier contended that neither Rule was applicable, and that it was entitled to call the nearest available man. The record reflects that Claimant was 31 miles from the work site, while junior employee Ward was 24 miles from the location. The Organization asserted that seniority has always been recognized as governing overtime assignments, there was no significant difference in distance, and that this issue had been previously determined on the property in Third Division Awards 30833 and 30952.

The record reflects that Claimant and junior employee Ward work in the same joint signal maintenance territory. The signal failure leading to the four hour overtime assignment in issue occurred in the adjacent territory, where the two assigned employees were both unavailable. There is no dispute that Claimant was on call for overtime on the claim date.

As noted by the Organization, the Board has considered two almost identical fact situations on the property involving the same contentions by the parties. In Third Division Award 30833, the Board found that Rule 15(d) applied, by its clear language, only to crew and signal shop, and thus was inapplicable to the fact situation involved. It similarly concluded that Rule 16(a) did not apply to the dispute at hand, since the disputants were not away from their point of call or the regular assignees on the job in question.

Despite these findings, the Board sustained the claims in both Third Division Awards 30833 and 30952, on the basis that the principle of assignment of overtime on a seniority basis unless restricted by the rules agreement governed the disputes. The Board reiterated its prior holdings finding seniority to be a basic cornerstone of collective bargaining applicable to determining preference to overtime work assignments. See Third Division Awards 5346, 14161, 19758.

A careful review of the record convinces the Board that the rationale of the Board in Third Division Award 30833 is equally applicable to this claim. The record reveals that the Organization did raise the seniority preference argument on the property in its November 16, 1996 appeal. There is no evidence in this record indicating any overriding

reason for not considering seniority. We find the seven mile difference in distance to the work site to be insubstantial, and Carrier failed to show that Claimant could not have responded to the work assignment as quickly as the junior employee. Further, because there is no dispute that Claimant was available and able to perform the work in question on July 12, 1996, we conclude that he was entitled to the overtime assignment.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of January, 2000.