

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35034
Docket No. SG-34942
00-3-98-3-683**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore and Ohio
(Railroad Company)**

STATEMENT OF CLAIM:

“Claims on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

- A. Claim on behalf of G. L. Thompson for payment of four hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 16(c), when it used a junior employee instead of the Claimant to perform overtime work on September 20, 1997, and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 15(97-225/226). BRS File Case No. 10688-B&O.**
- B. Claim on behalf of G. L. Thompson for payment of 12 hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 16(c), when it used junior employees instead of the Claimant to perform overtime work on August 17, 1997, and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 15(97-225/226). BRS File Case No. 10689-B&O.”**

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 Board will first note that contrary to the Statement of Claim as set forth above, the record discloses that the circumstances out of which each claim arises are distinct and separate from one another. Such commingling of claims is not conducive to the effective performance of the Board's work and is not contemplated by the provisions of Section 3 of the Railway Labor Act, as amended. The parties are thus put on notice that the Board frowns on the commingling of claims when issues in dispute are not, in fact, alike.

The dispute in Claim "A" arises from the Carrier having an operational need to work two eight-hour shifts at the Savannah Signal Shop on a rest day, Saturday, September 20, 1997.

The arguments of the parties are basically the same as those set forth in a claim advanced to the Board in a similar dispute, viz., Third Division Award 35033, except that the instant claim involves a different Claimant on a different date.

Basically, the Carrier maintains that pursuant to applicable Rules it called employees in seniority order to each work eight hours on either of the two rest day shifts regardless of what shift they were working during the week, whereas the Claimant contends that he should have been permitted to work eight hours on the first shift and four hours on the second shift as a more senior employee to a junior employee who was called to work eight hours on the second shift.

For the same reasons that the Board set forth in disposition of the prior dispute, Claim "A" in this case will likewise be denied.

The dispute in Claim "B" arises from a claim that the Carrier failed to call the Claimant for overtime work on a rest day and instead used an employee junior in seniority to perform 12 hours of overtime work on Sunday, August 17, 1997.

Our close examination of the record reveals that the Carrier has not met the necessary burden of proof to establish its contention that the Claimant had declined an offer to work on Sunday, August 17, 1997.

The claim filed with the Manager Signal Shop reads, in pertinent part, as follows:

"The carrier violated the current Signalmen's Agreement . . . when on 08/17/97 three men junior to G. L. Thompson worked overtime and he was not offered overtime. On 08/15/97 G. L. Thompson was offered overtime for 08/15/97 and 08/16/97 which was declined because of personal reasons, when G. L. Thompson asked about Sunday 08/17/97 the foreman said that he would not know until Mr. Nave [Manager Signal Shop] informed him. On Monday 08/18/97 when asked about Sunday the foreman said that he did not call G. L. Thompson that he had just been missed and to turn in a ticket if he wanted to.

The carrier should now compensate G. L. Thompson for the twelve hours of overtime that Lester Haydon worked."

In a September 22, 1997 letter denying Claim "B," the Manager Signal Shop asserted that he had a handwritten statement from the Signal Foreman to the effect that he had asked the Claimant about working overtime on Saturday, August 16, 1997, and that the Claimant had told him (the Signal Foreman) that he was not interested in working weekends. The Manager Signal Shop stated that a copy of the Signal Foreman's statement was being attached to his letter of denial of the claim.

In appeal of the Manager Signal Shop denial of the claim to the Manager Employee Relations, with copy to the Manager Signal Shop, the Organization took exception to the contention that the Claimant was not available and willing to work on the Sunday rest day, August 17, 1997. The Organization also advised that the written statement that the Carrier alluded to as having been received from the Signal Foreman was not, in fact, provided the Organization with copy of the Manager Signal Shop letter of denial. No correspondence of record shows that the Organization was thereafter provided copy of the alleged statement from the Signal Foreman. In this same respect, the record as presented to the Board also does not include copy of any such statement from the Signal Foreman.

The record as presented and handled on the property does, however, show that the Organization had presented to the Carrier, handwritten statements from two individual Signalmen wherein each states that they had witnessed the Signal Foreman on Friday, August 15, 1997, ask employees if they would be available for overtime work for that night and the next day, Saturday, August 16, 1997. Both Signalmen further included in their handwritten statements that they had heard the Claimant say that he could not work that night or Saturday, but would be available if there was overtime on Sunday, August 17,

1997. In this latter regard, the two Signalmen said that they heard the Signal Foreman say that "overtime had not been scheduled for Sunday yet." These statements of the Signalmen remained unrefuted in the handling of the claim on the property.

In the circumstances, and it remaining unrefuted, as set forth in the claim as it was initially filed, that the named junior employee had worked 12 hours overtime on August 17, 1997, Claim "B" will be sustained as presented.

AWARD

Claim sustained in accordance with the Findings.

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 25th day of October, 2000.