

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35639
Docket No. SG-35720
01-3-99-3-710**

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 R.J. Grill, for payment of three hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 10, when on May 10, 1998, it allowed a junior employee to perform overtime service and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 1152303. General Chairman’s File No. 89107105. BRS File Case No. 11096-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 fact situation in this case is clear and uncontroverted. The Claimant was regularly assigned as a CTC Maintainer at location “A.” On May 10, 1998, the Carrier utilized a junior CTC Maintainer from location “C” to respond to a report of a block signal

problem at location "B." Location "A" was 60 miles from the trouble spot. Location "C" was 29 miles from the trouble spot. Because of the use of the junior Maintainer, the Organization initiated and progressed a claim on behalf of the senior Maintainer alleging a violation of Rule 10 of the negotiated Rules Agreement.

Rule 10, in pertinent part, reads as follows:

"(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."

It is clear from the case record that the two employees here involved were not part of "a gang" as that term is used in Rule 10(d). Neither were they employed in the same Maintainer's territory. Rather, the facts reflect that this dispute involves three separate territories, namely, the Claimant's regular assigned territory, the other Maintainer's regular assigned territory, and the territory in between on which the signal work was performed.

Clearly the language of Rule 10(d) lends no support to the Organization's claim or contentions. The Board has not been provided with any Agreement Rule which in any way limits the Carrier in its exercise of managerial prerogative to use the independently assigned employee of the craft who is located closest to the trouble location to perform the necessary repairs. In the absence of any such Rule, the Organization has not met its burden of proof and the claim as presented 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 28th day of August, 2001.