

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36080
Docket No. SG-35912
02-3-99-3-939**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp. (NRPC-S):

Claim on behalf of W. R. Shultz, for payment of thirty two hours at the time and one-half rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Appendix "F" (8), when it permitted a junior employee on the call list to perform overtime service without calling the Claimant. Carrier File No. NEC-BRS(S)-SD-817. General Chairman's File No. RM3226-65-02-99. BRS File Case No. 11080-NRPC-S.”

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 August 8, 1998 alleges that the Carrier failed to call the Claimant, an Electronic Technician assigned to Maintenance Gang E-062, for overtime work testing RTU equipment at Grace Interlocking on June 15, 16 and 21, 1998, in preference to junior employee K. C. Hutman, an Electronic Technician assigned to Construction Gang E-092, in violation of Appendix F. It seeks thirty-two hours pay for the Claimant at the time and one-half rate for a missed overtime opportunity.

The pertinent section of Appendix F, Agreement Providing a Procedure for Calling C&S Department Employees for Trouble Involving Maintainer's Work Outside Their Regular Working Hours, and Rule 30 are set forth below.

"APPENDIX F

8. Employees will be called from the appropriate list for work in the order in which their names appear on the list.

RULE 30- OVERTIME PREFERENCE - CONTINUOUS WITH TOUR OF DUTY

- (a) When it is known in advance of the end of a tour of duty that a portion of a gang is to be worked on a subsequent tour of duty (not part of their regular assignment) or continuous with the current tour of duty, those with the greatest seniority in the class who were actually performing the work prior to the overtime will be given the first opportunity for the overtime.
- (b) If additional employees are required for such overtime, other qualified employees in the gang will be offered the overtime in seniority order.
- (c) The Maintainer working in his assigned territory with the gang when work as referred to in paragraph (a) is required, will be entitled to such overtime before members of the gang are used. . . ."

The record reveals that Hutman was assigned to Construction Gang E-092, which was primarily responsible for completing the Grace Interlocking cut-over. His position was assigned to work Monday through Friday from 6:00 A.M. to 2:30 P.M. The

Claimant held a regular assignment as an Electronic Technician on Maintenance Gang E-062, with Saturday and Sunday as his rest days. His gang, when not performing maintenance, was assigned to supplement the construction gang forces on that project during their regularly scheduled hours. The overtime in dispute was preplanned, and performed by Hutman between 9:30 P.M. and 6:00 A.M. on Sunday, June 14 and Monday, June 15, 7:30 P.M. and 6:00 A.M. on Tuesday, June 16, 3:00 P.M. and 3:00 A.M. on Saturday, June 20 and 7:00 P.M. and 6:00 A.M. on Sunday, June 21, 1998. The Claimant also worked 2.5 hours of overtime on June 15 and four hours of overtime on June 16; June 21, 1998 was one of his rest days.

The Organization argues that the Carrier violated Appendix F because the Claimant is senior to Hutman on the Electronic Technician overtime call list and is also regularly assigned to the Grace Interlocking section. It notes that, if Rule 30 is applicable as argued by the Carrier, Rule 30(c) clearly entitles the Claimant to the disputed overtime, rather than Hutman. The Organization contends that the appropriate rate for compensation for a lost overtime opportunity is the overtime rate of pay, citing Third Division Awards 27181 and 22569.

The Carrier contends that, even though the Claimant was senior to Hutman, neither Rule 30 nor Appendix F granted him preference to overtime on the Grace Interlocking cut-over because he was not assigned to the construction gang primarily responsible for performing the work on that project. It asserts that, insofar as Hutman actually performed work on the project prior to the preplanned overtime, he clearly possessed preference for the overtime under Rule 30(a). The Carrier argues that because the Claimant was not a Maintainer, the provisions of Rule 30(c) are inapplicable. It further contends that, even if the Claimant had some contractual right to the overtime, he was unavailable to work the required hours on June 15 and 16, 1998 due to Hours of Service Act restrictions, and a Maintenance Gang E-062 Electronic Technician senior to the Claimant was offered, and worked, 12 hours overtime on June 21, 1998 to assist Hutman.

A careful review of the record convinces the Board that the Organization failed to establish a violation of Appendix F or Rule 30 in this case. There is no dispute that the preplanned overtime work in issue was part of the primary responsibility of Construction Gang E-092, to which Hutman belonged, and not Maintenance Gang E-062, to which the Claimant belonged. Under the terms of Rule 30(a), Hutman had the right to claim a preference to the disputed overtime as he had "actually [been]

performing the work prior to the overtime.” The Claimant, being a member of the maintenance gang, cannot claim a preference, based solely on seniority, to work regularly performed by a construction gang. As the Claimant was not working in the classification of a Maintainer, Rule 30(c) does not give him preference to this overtime assignment. The Organization did not dispute the Carrier’s assertion that an Electronic Technician senior to the Claimant from the maintenance gang was utilized to assist Hutman on the only claim date that the Claimant may have been available to perform the overtime work in issue. Accordingly, the claim must fail.

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 18th day of June, 2002.