

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36235
Docket No. SG-36308
02-3-00-3-542**

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):

Grievance on behalf of D. Snyder for payment of 44 hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rules 5, 12 and 30, when it allowed an employee who did not possess Maintainer’s Class seniority to work an open position while pending assignment on the Second Trick Trouble Truck position at Midway (Advertisement Notice No. 129-SDI-0599), and deprived Claimant of the opportunity to perform this work. Carrier File No. NEC-BRS(S)-SD-838. General Chairman’s File No. JY 3286-102-1099. BRS File Case No. 11227-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 protests the Carrier's use of Signalman J. E. George to fill a vacant Maintainer's position at straight time rather than the Claimant, a Maintainer with established seniority in that class, on an overtime basis.

The position of second trick Maintainer assigned to the Trouble Truck at Midway Interlocking was first established in January 1999 and remained vacant despite repeated re-bulletining. Signalman George, who worked the second trick at Union Interlocking, qualified as a Maintainer by passing the test on April 22, 1999, and thereafter requested and was granted permission to work the vacancy during the time it was pending award. The position was subsequently awarded to B. Walsh effective May 20, 1999. George worked the vacancy on a straight time basis during the claim period, while the Claimant performed service on his own Maintainer assignment on the claim dates, and requests the payment of four hours of overtime on each of the claim dates based upon his seniority in the classification.

The Organization argues that the Carrier violated Rules 5, 12 and 30 when it permitted an employee with no seniority in the Maintainer classification to hold down an open Maintainer's position despite the fact that the Claimant, who had Maintainer seniority, had worked the prior trick performing the same work and was available to continue to do so on overtime for an additional four hours. The Organization asserts that seniority should prevail in making assignments to positions as well as overtime assignments, citing Third Division Awards 4393, 14161 and 19758.

The Carrier argues that the Agreement does not prohibit it from upgrading qualified employees to higher-rated work on a straight time basis, nor give employees a demand right to overtime work, referring to Rules 12(h), 24 and 33 for support. Further, the Carrier notes that employees cannot claim a preference for overtime work that was never performed, citing Public Law Board No. 3932, Awards 12 and 15; Third Division Award 31782. The Carrier contends that, in any event, a vacancy is a single entity and must be considered for its entire duration, and there is nothing in the Agreement requiring the Carrier to split up its assignment into four hour time blocks. The Carrier asserts that, because the Claimant already worked eight hours in his regular assignment on the claim dates, the Hours of Service Act which limits signal service employees to 12 hours on duty in a 24 hour period, made the Claimant unavailable to work the entire vacancy.

A careful review of the record convinces the Board that the Organization failed to prove a violation of the Agreement in this case. The Carrier is clearly entitled to utilize qualified employees in higher-rated positions on a straight time basis, as it did with Signalman George in this case. George was qualified to perform Maintainer's work at the time of the assignment and requested the opportunity to work the hold-down until the bid was awarded. He was paid the straight time rate for doing so. Numerous Awards support the principle that employees cannot claim a preference for overtime work that was never performed. Public Law Board No. 3932, Awards 12 and 15; Third Division Award 31782. The Rules dealing with seniority preference for overtime work do not apply in this case, as this dispute does not involve an overtime assignment. Accordingly, there is no merit to the claim.

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 24th day of September 2002.