

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36570
Docket No. SG-36470
03-3-00-3-702**

The Third Division consisted of the regular members and in addition Referee Nancy F. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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 (C&NW):

Claim on behalf of L. P. Kringle for payment of nine (9) hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rules 15 and 16, when on June 14, 1999 it allowed a junior employee to perform overtime service on routine maintenance on the Proviso Hump Yard Territory, and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 1211853. General Chairman’s File No. N15, 16-006. BRS File Case No. 11431-C&NW.”

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.

On June 14, 1999 L. P. Kringle was assigned the second shift position on Gang No. 2033 and worked eight hours of straight time and five hours of overtime. On that same day, M. J. Panagiotis, who was assigned to work on the first shift, was assigned to work ten hours of overtime on the first shift Maintainer’s territory.

On August 8, 1999 the Organization submitted a claim on behalf of the Claimant alleging that he should have been allowed to work the June 14 overtime to which Panagiotis was assigned. Specifically, the Organization contended that the Carrier

violated the Agreement because a second shift employee, the Claimant, was not utilized to work the overtime on the first shift.

The Carrier denied the claim, advising the Organization of the following:

“As a result of my investigation into the merit of your claim, I understand that on June 3, 1999 at the June Monthly Safety Meeting, it was discussed with L. P. Kringle and the rest of the Proviso Signalmen how the vacations would be covered and was agreed by all, that 1st Shift would cover 1st Shift vacations and 2nd Shift would cover 2nd Shift vacations. L. P. Kringle is the 2nd Shift Leader and in order for him to cover his assignment he would not be able to be scheduled for the 1st Shift assignment. Because this was agreed to by all I must inform you that your claim is null and void.”

In subsequent correspondence the Organization argued that employees cannot negotiate agreements superseding the collective bargaining agreement, thereby nullifying the “agreement” reached at the June Monthly Safety Meeting to which the Carrier referred.

Agreement Rules deemed pertinent to this dispute state, in relevant part:

“RULE 15 - WORK OUTSIDE REGULAR HOURS

- (d) When overtime service is required of a part of a group of employees who work together, the senior qualified available employees of the class involved shall have preference to such overtime if they so desire.**

RULE 16 - SUBJECT TO CALL

- (b) When an employee assigned to a point where two or more shifts are established is absent or when supplementary service is required and there are no qualified relief men available, assignee then on duty will continue on the work until same is completed or until relieved by assignee of a subsequent shift, but in no case will he be worked in excess of sixteen consecutive hours. Regular assignee may relinquish right to additional work referred to herein provided a qualified Signaller is available.”**

The Organization initiated this claim on behalf of the Claimant in a letter contending the Carrier violated Rules 15(d) and 16(b) when it called a junior employee for an overtime assignment on June 14, 1999. (Of note, the regular assignee was on

vacation). The Organization contended that the work in question was "routine maintenance" and "not an emergency."

The record shows, without dispute, that at the time of the claim there were no qualified relief men available to cover the assignment. The Claimant was working as a Shift Leader on the second shift, and the employee utilized was a Signal Maintainer who was working the first shift. (The employee on vacation was also a Signal Maintainer.) Therefore, it cannot be disputed that the Carrier complied with Rule 15(d) because the overtime was assigned to one of the group of employees who worked together and was assigned to the employee in the class.

Further, the Carrier correctly notes that the Claimant would have been unable to perform the work claimed because he was scheduled to work his normal eight hour shift the same day following the relief work sought. If the Claimant had been allowed to perform the work, the Carrier would have been required to call another employee to fill the remainder of the Claimant's shift, again at the time and one-half rate, to be in compliance with the Federal Hours of Service Act. Under the circumstances, the disputed overtime was assigned in accordance with the Agreement. Therefore, this claim must be 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 16th day of June 2003.