

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36595
Docket No. SG-35764
03-3-99-3-744**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad**

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 J. A. Glasser for payment of five hours and 30 minutes at the time and one-half rate account Carrier violated the current Signalmen's Agreement, particularly Rule 10, when on May 31, 1998, it allowed junior employees to perform overtime work on the Claimant's assigned district thereby depriving the Claimant of the opportunity to perform this work. Carrier File No. 1153658. General Chairman's File No. 81105648. BRS File Case No. 11097-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 salient facts giving rise to this claim are not in dispute. In 1998, the Claimant was a Signal Inspector headquartered at North Platte, Nebraska. His assigned hours were 7:30 A.M. - 4:30 P.M. Monday through Saturday with Sunday his rest day. Part of the Claimant's work district was from MP300 to MP365 on the Sidney Subdivision.

On Sunday, May 31, 1998, two signal employees junior to the Claimant were called to assist on a steel gang project at MP312 on the Sidney Subdivision. They worked on this project from 3:00 P.M. to 8:30 P.M., five and one-half hours.

On July 11, 1998, the Organization filed a claim in which it contended that the Carrier violated Rule 10 of the Agreement when it assigned two employees junior to the Claimant within the boundary of his work district. It is the Organization's position that the Claimant should have been called to perform this work on overtime. It requested that he be compensated five and one-half hours at the overtime rate for the work opportunity he lost on Sunday, May 31, 1998.

The Carrier denied the claim contending that Rule 10 was inapplicable to the work performed on May 31, 1998, on the Sidney Subdivision inasmuch as the signal gang employees who were assigned to assist on the steel gang project were not members of the Claimant's gang. Moreover, according to the Carrier, the employees who assisted with this project were required to have a Commercial Driver's License (CDL) because a boom truck was needed and the Claimant does not possess a CDL.

Rule 10 (d) of the parties' Schedule Agreement provides:

"When a portion of a gang is required for overtime service, the senior employee of the classes of the gang involved shall, if available, have preference to such overtime work or service."

It is undisputed that the two employees of the signal gang who were assigned to assist on a steel gang project on May 31, 1998, were not part of the Claimant's gang. Accordingly, a portion of the Claimant's gang was not required for overtime service on May 31, 1998, his rest day. Therefore, Rule 10(d) was inapposite to the Claimant and he did not have a preference to this work.

Inasmuch as the Claimant did not have a preference to the work assigned to junior signal gang employees on his work district it was the Carrier's prerogative to use

the junior employees because they possessed a CDL unlike the Claimant who did not have CDL. The claim is denied as a result.

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.