

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36856
Docket No. SG-36314
04-3-00-3-503

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company (former Chicago &
(Northwestern Transportation Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (former C&NW):

Claim on behalf of D. J. Zimmerman for payment of Nine hours and Forty-five minutes at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rules 15 and 16, when on April 3, 1999 Carrier failed to call the Claimant to perform overtime service on several signal trouble cases in and around Tama, Iowa. Carrier allowed a junior employee to perform this service and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 1197189. General Chairman’s File No. 9c159659.1. BRS File Case No. 11306-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 May 19, 1999, the Local Chairman alleged violation of Rule 15(d) and Rule 16(a) when the Carrier failed to call the Claimant in seniority order. The Organization argues that the Claimant was first in seniority order in the three-man gang, followed by D. Beck, second, and K. Hopwood, third. The Organization maintains that on April 3, 1999, the Signal Operations Center called Signal Maintainer Beck for overtime instead of the Claimant who was the senior employee available for work.

Our review of this case centers on one unrebutted assertion made by the Carrier and documented with the log for the date of the alleged violation. It supports the Carrier's statement that the Claimant "was not on duty and was checked out during the trouble call." Rule 14 (d) states:

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

The Carrier maintains that the Claimant was "checked out and shown unavailable until April 5, 1999" He was therefore not an "available" employee subject to call. Absent any rebuttal by the Organization, this stands as fact. The claim must be denied.

AWARD

Claim denied.

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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 January 2004.