

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36943  
Docket No. SG-36617  
04-3-01-3-143**

**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 R. E. Gavin for payment of 24 hours at the time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly Appendices A-1 and B-4, when on January 7 and 8, 2000 Carrier assigned a Signal Trainee to install and terminate cable at the 30th Street Station in Philadelphia, PA. Carrier's action deprives the Claimant of the opportunity to perform this work. Carrier's File No. NEC-BRS(S)-SD-868. General Chairman's File No. JY 321017-18400. BRS File Case No. 11671-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 assignment of overtime to a Signalman Trainee ahead of the Claimant, a Maintainer with established seniority in that class, as a violation of Appendices A-1(C) and B-4(8), which provide, in pertinent part:

**"APPENDIX A-1**

- C. . . . nothing in this agreement shall be construed as requiring the establishment or retention of any position of Trainee, nor will Trainees be used to take the place of Signalmen or Maintainers.

**APPENDIX B-4 - PROCEDURE FOR CALLING C&S  
DEPARTMENT EMPLOYEES FOR TROUBLE INVOLVING  
MAINTAINER'S WORK OUTSIDE THEIR REGULAR  
WORKING HOURS**

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

The Claimant was regularly assigned to Construction Gang R-964 headquartered at Penn Coach Yard, Philadelphia, Pennsylvania, which was working on a project involving the rehabilitation of a duct line from Zoo Interlocking to North Philadelphia Interlocking on the day preceding the overtime work in issue in this case. Trainee Arcolesse was regularly assigned to Construction Gang R-960 with the same headquarters and Monday-Thursday workweek as the Claimant. On Thursday, January 6, 2000 nine member Construction Gang R-961 began a three day project replacing telephone lines with fiber optic cable within the Carrier's 30th Street Station, which was scheduled to be completed on overtime on Friday and Saturday, January 7 and 8, 2000. Four additional men from different gangs were assigned to supplement the workforce of Gang R-961 on this project. Trainee Arcolesse was part of this supplemental workforce and worked on the 30th

Street Station project on Thursday, January 6, 2000 as well as the following two days on overtime, the claim dates herein. The Claimant performed no work on the 30th Street Station project.

The Organization argues that the Carrier violated Appendices A-1 and B-4 by assigning the Trainee overtime rather than the Claimant, who was qualified, available and had more seniority than the Trainee. The Organization relies upon Third Division Awards 14161, 30833, and 33909 in arguing that the Board should uphold the established principle of assignment of overtime on a seniority basis, and notes that the Carrier must comply with call lists, citing Third Division Awards 27181 and 31240. The Organization asserts that the appropriate remedy for a violation which deprives an employee of a work opportunity is the amount the employee would have earned absent the violation, which in this case is 24 hours at the overtime rate, citing Third Division Award 22569.

The Carrier argues that it complied with Appendix A-1 because the Trainee was not used to take the place of a Maintainer in this case, but rather was used as part of a supplemental workforce. It asserts that Appendix B-4 is not applicable in this case because this was not a trouble call, and the overtime assignment herein was governed by Appendix B-3, which requires that employees who were actually performing the work prior to the overtime be given the first opportunity for the overtime as a continuation of their work assignment. The Carrier contends that it complied with the provisions of Appendix B-3 in making the assignment to the Trainee, who had been working on the project the prior day, and not the Claimant, who had no involvement whatsoever with the project requiring the overtime in issue. The Carrier argues that the claim is excessive, because it has been found that the appropriate monetary remedy for work not performed is at the straight time rate, citing Public Law Board No. 3932, Award 14, Public Law Board No. 4549, Award 1, Public Law Board No. 5081, Award 3 and Third Division Awards 26235 and 26534.

A careful review of the record convinces the Board that the Organization failed to prove a violation of the Agreement in this case. As noted by the Carrier, the evidence reveals that Trainee Arcolesse was part of the supplemental workforce to Gang R-961 on the 30th Street Station project, and was not used to take the place of a Maintainer, thereby negating any violation of Appendix A-1. Further, because

the Trainee received the overtime assignment in issue as a continuation of his regular assignment the previous day, the Carrier complied with the terms of Appendix B-3, which we find applicable. There is no showing that Appendix B-4 involving trouble calls was either relevant or violated in this case. Because the Organization failed to establish a violation of the Agreement by the protested overtime assignment, the 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 22nd day of March 2004.**