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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36996
Docket No. SG-36532
04-3-01-3-26

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

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

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 D. E. Beck for payment of 30 hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule (Rule 1) and Rules 2, 15, 16 and 21, when on November 20 and 21, 1999 Carrier allowed a junior employee to perform overtime service. The work consisted of following track gangs and working on a Hot Box Detector at Belle Plaine, Iowa. The Claimant is the regular assignee on the territory where the work was performed and Carrier's actions deprived him of the opportunity to perform this work. Carrier's File No. 1219335. General Chairman's File No. N15, 16-022. BRS File Case No. 11489-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 November 17, 18, 19, 20 and 21, 1999, i.e., Wednesday through Sunday, junior Signalman R. Litz was used to perform signal work in connection with a derailment at Belle Plaine, Iowa. The Claimant was assigned to a position of Signal Maintainer at Tama, Iowa. His assigned rest days were Saturday and Sunday. The Claimant is senior as a Signalman to Signalman Litz.

The issue in this case is whether the Carrier violated the provisions of the Agreement when it used Signalman Litz to continue to work on the weekend at the derailment site where he had been working during the week. There is no disagreement relative to the proper use of Signalman Litz to perform service on the 17th, 18th and 19th - Wednesday, Thursday and Friday. The Claimant performed no service at the derailment site. The point of disagreement centers on the use of the junior employee to perform service at the time and one-half rate on Saturday and Sunday, November 20 and 21, 1999.

The Board finds no support in the language of the cited Rules for the Organization's position. Both employees involved in this case are qualified, experienced Signalmen as referenced in Rule 2. Rule 15 addresses situations in which overtime service is required of a part of a group of employees who work together in a shop. No such situation exists in this case. Rule 16 covers situations involving employees subject to call. No such circumstance exists in this case. Rule 21 (c) deals with relief work which is not found in this case. It appears that the Organization was merely "shelling the woods" in the hope of hitting something of merit.

From the Board's review of the record in this case, it is apparent that the employee who properly worked at the derailment site during the week was the proper employee to continue to work at the derailment site on the weekend. Coupled with this conclusion is the fact that the Claimant performed a total of more than 16 hours of overtime work on the claim dates on his own regular assignment.

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He was not and could not have been available to perform service at the derailment site in lieu of Signalman Litz.

From the totality of the evidence that exists here, it is obvious that there was no proven violation of any provision of the Agreement in this case. Therefore, the claim as presented is 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 18th day of May 2004.