

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37101
Docket No. SG-37015
04-3-01-3-623

The Third Division consisted of the regular members and in addition Referee Francis X. Quinn 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 Company:

Claim on behalf of J. M. O'Connor and J. G. Keith for payment of seven hours each at the time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly Rules 13, 15, 16, and 50, when on August 13, 2000, Carrier allowed a signal inspector and a lead signalman to perform overtime work on switches and related facilities at or around MP 256 and MP 258 on the Nebraska Division. This action deprived the Claimants of the opportunity to perform this work. Carrier's File No. 1247859. General Chairman's File No. N13 15 16-134. BRS File No. 11765-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 case is identical to Third Division Award 37019. Overtime work normally goes to the incumbent of the position if he or she is available. The relevant provision in Rule 16A states, "Unless registered absent, the regular assignee will be called, except when unavailable due to rest requirements. . . ." The problem arose because the regular employee was taken off of the position on July 14, 2000, creating a permanent vacancy. While the vacancy was bulletined, the position was filled on a temporary basis by a Relief Maintainer, S. D. Dewey.

The Organization did not challenge the Carrier's right to require Dewey to fill the position during the week. The governing second paragraph of Rule 26 required the Carrier to fill the temporary vacancy pending the tolling of the bidding process because the vacancy exceeded one week in duration. The Rule affirms that the vacancy may be filled by "the senior qualified employee of Class 1 assigned to the Signal or Maintenance Gang." We assume Dewey was such a person because there is no claim on behalf of anyone else for the weekday dates. The record does not justify a finding that the Carrier violated the Agreement.

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 21st day of July 2004.