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**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 37137  
Docket No. SG-37777  
04-3-03-3-112

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(Indiana Harbor Belt Railroad Company

**STATEMENT OF CLAIM:**

"Claim on behalf of the General Committee of the Brotherhood that:

Claim on behalf of K. Ferry and J. J. Emsing, for 14 hours each at their respective time and one-half rate of pay, account Carrier violated the current Signalmen's Agreement, when it used other employees instead of the Claimants for overtime service on January 21, 2001, at LaGrange Interlocking and deprived the Claimants of the opportunity to perform this work. Carrier File No. S-01-003. General Chairman's File No. 01-56-IHB. BRS File Case No. 12385-IHB."

**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 February 22, 2001, the Organization filed a claim on behalf of the Claimants, arguing that the Carrier violated the parties' Agreement when, on January 21, 2001, the Claimants' rest day, it assigned three employees from Section 4, the Gibson Seniority District, to perform signal work on Section 8, instead of assigning the work to the Claimants. The work at issue involved replacing switch machine No. 15 and signal No. 10 at LaGrange Interlocking. The Carrier denied the claim.

The Organization contends that in denying this claim, the Carrier admitted that the supervisor who made the overtime assignment was from another seniority district and unfamiliar with the shift assignments at the Blue Island Hump. The Carrier also admitted that its supervisors are required to contact all signal personnel on the seniority district for scheduled overtime in cases such as this. The Organization emphasizes that this did not happen in the instant matter, and the wrong employees were assigned to perform the work. With regard to the Carrier's assertion that the supervisor did speak with one of the Claimants and that the other Claimant therefore should have had knowledge of the overtime in question, the Organization maintains that the supervisor called the hump yard only to ask for phone numbers; the supervisor did not ask whether the Claimants wanted to work the overtime.

The Organization asserts that there is no dispute that the Carrier assigned employees from the wrong seniority district to perform the overtime assignment in question. The Carrier's reason for making the wrong assignment, that the supervisor was from another district and was unfamiliar with the shifts, does not excuse the violation. The Organization emphasizes that signal employees on a seniority district have first right to overtime, over employees who are not assigned to the affected seniority district. The work in question was reserved to the employees on Section 6, and the Carrier did not have the right to divert this work to employees not on the Section 6 district. The Organization points out that the Carrier did not provide any evidence indicating that it was unable to assign the Claimants to perform the work; the record shows that the Carrier did not even attempt to have the Claimants perform the work. The Organization argues that it must be held that the Claimants were available, and that they improperly were deprived of a work opportunity that accrued to them by contract.

**The Organization points out that it is well established that when employees are deprived of the opportunity to perform work on their seniority district, the employees lose wages they would have earned for doing the same work and they are entitled to recover for such loss. The Organization argues that the Carrier violated the Agreement when it assigned three employees from Section 4 to perform signal work on Section 8, rather than assigning the work to the Claimants, who are on Section 6 and have exclusive rights to be offered covered work on Sections 6, 7, 8, and 9. The Organization ultimately contends that the claim should be sustained in its entirety.**

**The Carrier acknowledges that the Claimants have the exclusive right to be offered covered work on Section 6, 7, 8, and 9 before employees from another seniority district can be utilized. The Carrier asserts that the supervisor involved in this matter is in charge of another seniority district and was unfamiliar with the shift assignments at the Blue Island Hump. The Carrier maintains that when the supervisor was scheduling personnel for the overtime in question, he spoke with one of the Claimants when he called from the derailment site to obtain phone numbers for the Blue Island Signal personnel. The Carrier argues that the Claimants obviously had knowledge of the overtime in question, and they had ample opportunity, during the phone conversation with the supervisor, to inform the supervisor of their availability for the overtime in question; the Claimants, however, failed to do so, even though they were well aware that the supervisor was in need of personnel. The Carrier further emphasizes that the Claimants knew that the supervisor was calling from the derailment site. The Carrier asserts that if the Claimants had decided to make themselves available, they easily could have obtained the supervisor's cell phone number and contacted him. The Claimants, however, also failed to do this.**

**The Carrier acknowledges that its supervisors are required to contact all Signal personnel on the Seniority District for scheduled overtime in cases such as this, but it maintains that its supervisors are not expected or required to guess whether an on-duty employee is or would be available. The Carrier points out that the on-duty employee carries a reasonable responsibility to notify the supervisor that he is available for and/or interested in working the scheduled overtime. The Carrier maintains that in this case, the on-duty employee, one of the Claimants, failed to do so.**

The Carrier ultimately contends that the instant claim is without merit, and it should be denied in its entirety.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board reviewed the evidence and testimony in this case, and we find that the Organization met its burden of proof that the Carrier violated the Agreement when it assigned three employees from Section 4 to perform signal work on Section 8 instead of assigning the work to the Claimants who were assigned to Section 6 and who had exclusive rights to be offered the covered work on Sections 6, 7, 8, and 9 before other employees from other seniority districts. The work at issue involved replacing switch machine No. 15 and signal No. 10 at LaGrange Interlocking and we find that the Claimants were the appropriate employees to be called for the overtime. It may very well have been that the supervisor who made the overtime assignment was not familiar with the shift assignments. Nevertheless, whatever the excuse, it was the Carrier's actions in this case that violated the rights of the two Claimants.

Once the Board has determined that there is sufficient evidence in the record to support the finding that the Carrier violated the Agreement, we next must turn our attention to the type of relief requested by the Organization. In this case, the Organization is seeking 14 hours each for the two Claimants at the respective time and one-half rates of pay. The Board finds, however, that the entire amount of overtime was 14 hours and, therefore, it would not be appropriate for the Board to award 28 hours of overtime to the two Claimants. We therefore find that the claim is sustained in part and the Claimants shall be awarded a total of 14 hours at their overtime rates to be divided equally, or a total of seven hours each.

#### AWARD

**Claim sustained in accordance with the Findings.**

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**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 25th day of August 2004.**