

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37427
Docket No. SG-37822
05-3-03-3-181

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Belt Railway of Chicago (BELT):

Claim on behalf of T. A. Bogard, for four hours at his time and one-half rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Rule 17(A2), when it used a junior employee, the midnight maintainer, while on his day off, to perform extra work on overtime at the Belt Junction Interlocking and/or 80th Street Interlocking, instead of the Claimant who was senior and was the regularly assigned road maintainer on the day claimed. The overtime service occurred on October 18, 2001, and deprived the Claimant of the opportunity to perform this work. Carrier's File No. 300. General Chairman's File No. 02-28-BRC. BRS File Case No. 12562-BELT.”

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.

Claimant T. A. Bogard, who on or about October 18, 2001, was assigned to the position of Road Maintainer, was working his regular assignment, which included FRA testing of crossings. On that day, the Carrier called midnight Maintainer R. Russin to fill a vacancy created by a Maintainer who had called off due to injury. Russin was called in on his off-day to fill this vacancy, and he received overtime for each hour of work. Russin conducted FRA testing of crossings, which was part of the regular duties of that position. The work was not in conjunction with Russin's regular assignment.

The Organization filed a claim on behalf of the Claimant seeking four hours pay at the overtime rate, based on the contention the Claimant should have been held over after his regular eight-hour assignment to perform some or all of the work of the vacant position that had been filled by Russin.

The issue in this case is whether the Carrier improperly assigned overtime to Russin instead of the Claimant, thus entitling the Claimant to an additional four hours of pay at the overtime rate.

The controlling Rule is 17(A2) which provides:

"For extra work outside the Hump, and not continuous with regular assignments, the regularly assigned road maintainers will be called first, in seniority order. Then road maintainers on their days off, next signal gang members, and then Hump Maintainers in seniority order. Finally, by Signal employees in seniority order."

The Organization takes the position that the Carrier violated Rule 17(A2) when it assigned Russin to perform the work in question. The Organization contends that Russin was junior to the Claimant and as such, should not have received the relevant assignment.

Conversely, the Carrier takes the position that it acted properly. It is acknowledged that the regularly assigned Road Maintainer was not available for duty due to an injury, and that no other regularly assigned Road Maintainers were available. The Claimant was already on duty working his regular assignment and Russin was called in on his off-day to fill a separate vacancy. According to the Carrier, the work was not continuous with the Claimant's work and, therefore, he was not entitled to the work.

After a review of all evidence, the Board finds that it must agree with the Carrier. The burden of proof in this matter falls to the Organization to prove that the Carrier erred when it assigned Russin to the relevant overtime. The Organization has been unable to meet that burden. There is insufficient evidence to suggest that the work was continuous with the Claimant's shift. The Organization failed to establish that the work should have been assigned to the Claimant.

Thus, 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, 2005.