

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
—THIRD DIVISION

Award No. 37531
Docket No. SG-37261
05-3-02-3-231

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien 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 (UP):

Claim on behalf of S. P. Carroll, for payment of three hours at the time and one half rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 16, when it failed to call the Claimant for overtime service on his regular assigned territory on January 31, 2001. Carrier's File No. 1260871. General Chairman's File No. W-16-099. BRS File Case No. 11880-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 facts evidence that on January 31, 2001, a Track Inspector noticed a gap in the rail, commonly referred to as a pull apart or open joint, at MP 488.27 on the Elko Subdivision in the vicinity of Battle Mountain, Nevada. The Claimant is regularly assigned as a Signal Maintainer on this territory. Track employees were called to repair the rail. They notified the Signal Operations Center that the signal bond at the joint was broken and would have to be replaced. The following day, the Claimant repaired the bond during his regular tour of duty.

On February 11, 2001, the Organization filed a claim on behalf of S. P. Carroll for three hours' pay at the time and one-half rate for January 31, 2001. It was the Organization's position that the Claimant should have been called out on overtime to replace the broken bond at MP 488.27. The Organization asserted that the claim was supported by Rule 16A.

The Carrier denied the claim contending that there was no need to call the Claimant out on overtime on January 31, 2001, because no signal work was performed at that time. Signal Operations Center personnel determined that the bonding did not require immediate attention and could be replaced the following day during the Claimant's regular tour of duty.

Absent a specific Rule to the contrary, it is management's prerogative to determine when work is to be performed. In the instant case, Signal Operations Center personnel determined that bonding at the pull apart at MP 488.27 did not have to be replaced immediately. That determination did not violate Rule 16A.

Rule 16A provides that unless registered absent, the regular assignee will be called for an emergency if he/she is available for service under the Hours of Service Act. Rule 16A was inapposite to this dispute because no signal employee was called out on January 31, 2000, to replace the signal bond at the pull apart at MP 488.27. Rather, the Carrier determined that this situation did not involve an emergency and that the bonding could be performed the following day during regular work hours. As noted above, it was the Carrier's prerogative to make that decision.

The Organization maintains that the Carrier's decision to wait until the next day to bond the pull apart violated the Carrier's own Rules regarding emergency track work as well as Federal Railroad Administration (FRA) Rules and

Regulations. In fact, according to the Organization, the FRA issued a Code 1 violation because of this incident.

Whether or not the Carrier's decision not to immediately bond the pull apart at MP 488.27 on January 31, 2000, violated the Carrier's Rules regarding emergency track work and/or FRA Rules and Regulations is beyond the jurisdiction of the Board. And in any event, even if the Carrier's Rules regarding emergency track work or FRA Rules and Regulations were violated this, by itself, would not constitute a violation of Rule 16A of the Agreement. Accordingly, 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 23rd day of June 2005.