

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
-THIRD DIVISION**

Award No. 37535
Docket No. SG-38060
05-3-03-3-480

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:

Claim on behalf of D. O. Bantilan, for 25 hours at the overtime rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Rules 13 and 80, when on August 15, 19, 20, 21 and 22, 2002, Carrier allowed junior employees from the Claimant's gang to work on various overtime projects and at the end of each day the employees called the Claimant (their signal foreman) to log in their time worked and as past practice Carrier paid the Claimant under Rule 13 when his junior gang men worked overtime. Carrier in this case refused to pay the Claimant in violation of the rule and past practice. Carrier's File No. 1340938. General Chairman's File No. W-13-201. BRS File Case No. 12712-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 Claimant has a seniority date of February 20, 1991. In August 2002, he was the Signal Foreman on Signal Construction Gang No. 5774, which was headquartered in Stockton, California, on the Carrier's Fresno Subdivision. Gang No. 5774 was split into two work groups to complete two different signal projects. The Claimant supervised one work group working north of Fresno, California. Assistant Signal Foreman Gates supervised the other group working in the vicinity of Turlock and Tulare, California. The two work locations were approximately 150 miles apart.

On August 15, 2002, a Signalman junior to the Claimant worked overtime cutting over a come out signal in Turlock, California. On August 19, 20, 21 and 22, 2002, a Signalman junior to the Claimant worked overtime cutting over GCP 3000 units at various crossings in Tulare, California. All of this overtime was performed by Signalmen on the work group supervised by Assistant Signal Foreman Gates.

On October 13, 2002, the Organization filed a claim on behalf of the Claimant for the 25 hours of overtime worked by junior Signalmen on Gang No. 5774 on August 15, 19, 20, 21 and 22, 2002. It was the Organization's position that the Carrier violated Rule 13 of the parties' Agreement when it gave preference to overtime to employees junior to the Claimant. Therefore, according to the Organization, he must be reimbursed for the overtime he lost pursuant to Rule 80.

The Carrier denied the claim contending that Rule 13 was inapplicable because the Claimant was not working with the work group supervised by Assistant Foreman Gates. Rather, he was working on a separate project some 150 miles away. Furthermore, the Carrier alleged that the Claimant was not deprived of any work opportunity because he also worked overtime on August 19, 20, 21 and 22, 2002.

Under the circumstances extant in this claim the Board finds that Rule 13 was not violated when employees junior to the Claimant worked overtime. It must be

stressed that this overtime was unplanned. It was not scheduled in advance. The Carrier had no reason to anticipate that employees cutting over a signal and GCP 3000 units would work overtime on five days in August 2002.

Moreover, the Claimant was working north of Fresno, some 150 miles from where the other half of Gang No. 5774 was working at Turlock and Tulare, California, when the latter worked overtime. The work groups were working on separate construction projects in separate geographic locations. Because the overtime at Turlock and Tulare was not scheduled or planned in advance, there was no practical way that the Claimant could have worked this overtime.

The Organization further argues that the practice has been to allow the Claimant overtime when a junior member of his gang works overtime. There is not a scintilla of evidence in the record to support the Organization's assertion. Therefore, the Organization has not sustained its burden of proving that such a practice existed.

For all the foregoing reasons, the claim 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 23rd day of June 2005.