

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37703
Docket No. SG-36900
06-3-01-3-470

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin 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 L. L. Emken for payment of eight hours at the time and one-half rate. Account Carrier violated the current Signalmen’s Agreement, particularly Rules 1, 13, 16 and 80 when on July 3 and 4, 2000 Carrier assigned a construction gang employee to cover the maintenance and trouble calls on the Claimant’s assigned territory. This action deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 1241384. General Chairman’s File No. N13 16-096. BRS File Case No. 11695-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 instant claim as well as those contained in Third Division Awards 37702, 37704, 37705 and 37706 arose out of a special scheduling situation. The Carrier scheduled a 12-hour shift to cover signal maintenance requirements that might arise during the afternoon and evening hours of July 3 and the early morning hours of July 4, 2000. The shift was designed to prevent signal-related delays to regular commuter trains that were running during those hours to carry normal rush hour traffic out of Chicago, as well as extra trains that were expected to carry large numbers of passengers into and out of the city to attend the Taste of Chicago festival and who were expected to stay to watch the late-night fireworks display before heading home. The shift was scheduled to work from 2:30 P.M. on July 3 through 2:30 A.M. on July 4.

The Claimant worked his regular 6:30 A.M. to 2:30 P.M. shift on July 3 and then worked another four hours of overtime when his time expired under the Hours of Service Act. The Carrier covered the special shift by instructing a member of a Zone Construction Gang to receive paid rest during the daytime hours and then work the special 12-hour shift at the overtime rate. Although the claim does not assert that the Zone Construction Gang employee was junior to the Claimant, the on-property record suggests that he was. As a result of the Carrier's scheduling, the Zone Construction Gang employee earned eight more hours of overtime for July 3 - 4 than did the Claimant.

Distilled to its essence, the Organization contends that the Claimant should have been rested during his regular shift hours to be legal under the Hours of Service Act to work the special shift. It contends that the Zone Construction Gang employee should have been used to cover the Claimant's regular shift. It further contends that such a scheduling process was used by Carrier officials on the Geneva and Kenosha Sub-Divisions of the Carrier's commuter operations.

Although the claim cites several Rules as having been violated, the Organization relies primarily on one sentence in Rule 16 that reads as follows:

“ . . . Unless registered absent, the regular assignee will be called, except when unavailable due to rest requirements under the Hours of Service Act, as amended by Public Law 94-348.”

The entire context of Rule 16 must be read in connection with the one sentence cited by the Organization in order to reveal its intended purpose. Rule 16 is entitled “SUBJECT TO CALL.” When read in its entirety, it is clear that the Rule pertains to situations in which an employee is off-duty and is subject to being called back to work. Thus it does not appear to be applicable to the instant facts because the Claimant was already working on overtime at the time the special shift began. Moreover, he would have been unable to complete the special shift due to the Hours of Service Act.

No other Rules cited by the Organization explicitly require the Carrier to have held the Claimant off of his regular assignment so he could be rested to work the special shift. Under the circumstances, therefore, we must find that the Organization has not sustained its burden of proof to establish a violation of the Agreement. It is simply not sufficient to sustain that burden by merely suggesting a different means of staffing the special shift.

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 30th day of January 2006.