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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37882
Docket No. SG-37797
06-3-03-3-156**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Seaboard
(Coast Line Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of F. D. McCube, for 66 hours and 30 minutes at his time and one-half rate of pay and D. D. Hogarth for 59 hours at his time and one-half rate of pay account Carrier violated the current Signalmen’s Agreement, particularly Rule 17, when it used employees junior to the Claimants for overtime service on their assigned territories and denied the Claimants the opportunity to perform this work during the months of January, February and March of 2002. Carrier’s File No. 15(02-0072). General Chairman’s File No. SCL-04-30-02A. BRS File Case No. 12580-SCL.”

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.

Both parties agree on the facts. In January, February, and March 2002, the Claimants were assigned Signal Maintainers responsible for their territory. The Carrier utilized a System Signal Construction Team for work on the Claimants' assigned territory. The project on the territory involved "a timbering gang replacing ties and a curve patch team replacing rail" followed by the System Signal Construction Team repairing crossings and putting them back into service. The employees of the System Signal Construction Team were junior to the Claimants and were used to perform work. The Claimants were informed that they might be used if needed on the project. During the three months, they were used on their regular assignments and not called for overtime to repair the crossings and put them back in service.

The Organization alleges violation of Rule 17 of the Agreement. It further asserts that the utilization of junior employees to perform overtime in assisting the Claimants on their territory with their work clearly violates the Claimants' rights. Rule 17 states in pertinent part:

" . . . Unless registered absent, as above, the regular assignees, or employees filling such positions, who can be called by telephone or reside within calling distance and calling facilities are available, will be called first for trouble on the assigned section or territory."

The Claimants were not called for trouble on their assigned section or territory and the overtime was performed by employees of the same class, but junior to the Claimants.

The Carrier denies that the Claimants were entitled to the work, because the work was construction work. The Carrier further argues that it did not violate Rule 17 because "there was no trouble involved but merely the protecting, and testing of signal circuits during and after the accomplishment of the planned rail work."

The Board reviewed the record and the Awards cited by the parties. Rule 17 refers to a trouble call. There was no record of trouble on the assigned territory. There was no record of a call made to anyone junior to the Claimants. This was clearly planned rail work, following a timbering gang and curve patch team working across both Claimants' territories. It is clearly construction and not a

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simple "signal trouble" for which the Claimants should have been called under Rule 17 (Third Division Award 27574; Public Law Board No. 4433, Award 45). 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 1st day of August 2006.

Labor Members Dissent
Third Division Award 37882
Docket No. SG – 37797
Referee: Marty E. Zusman

As noted in the Award the Majority started out on the right path by declaring that "Both parties agree on the facts." However, thereafter the Majority stumbled onto its own path that has led to a destination inconsistent with the factual record.

At the onset it must be noted that the parties – on the property – discussed their respective positions regarding the difference between construction verses maintenance. The Majority for whatever reason only addressed Carrier's contentions and ignored any position raised by the Organization. The fact is that the SCL Agreement does not make a distinction between construction and maintenance work.

Notwithstanding the foregoing, the Organization during the on-the-property handling noted that the controlling issue involved the principle of seniority rights. However, the Majority overlooked this critical subject matter, and also overlooked the fact that the Carrier never once addressed the Organization's contentions.

During the handling of this case on the property the Organization expressed the following unrefuted remarks:

"Our second contention is based on seniority. Mr. JA Williams ... and Mr. BM Dupuis ... were junior employees on the system construction team used for this project. The system construction teams made overtime on the dates listed above. Many board decisions in the past cite the importance of seniority as it applies to overtime and work opportunity. Seniority is one of the basic cornerstones of collective bargaining. Third Division Award 5346 recognized this principle when it held:

'Despite Carrier's contention to the contrary, it is well settled by awards of this Board that even though there are no specific rules in the Agreement covering the situation, seniority is the essence of the Collective Agreement and that it applies in determining preference to overtime work of a given class.'

"The principle of assignment of overtime on a seniority basis unless restricted by the rules agreement was repeated in Third Division Award 14161 where we read:

'It our view that unless there is a rule in the agreement or a negotiated local practice providing for the assignment of overtime on some basis

other than seniority, that seniority should be the determining factor. This Board has so held on a number of occasions.' ”

As previously, noted the Carrier never addressed the Organization's arguments or contentions regarding the issue of seniority, however, it did recognize that this issue was relevant. Carrier's only comments were made at the closing stages of this grievance wherein, they stated that:

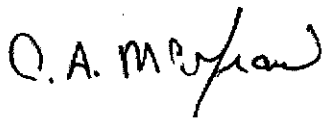
“...The Organization contends that the Carrier violated the current Agreement by allowing junior construction employees to perform overtime service.

The Carrier is going to deny this claim until it can meet in conference with the Organization in an attempt to resolve this dispute.”

It is obvious that the Carrier was initially willing to go down the right path and resolve this dispute based on the Organization's arguments. It was that reason they never addressed the question regarding seniority rights. For whatever reason Carrier abandoned the right path in the hopes that the Board might stumble down a path that would lead to nowhere. Carrier's venture paid off in this case, but its final destination ended up in never-never land.

If the Majority had reviewed the entire record of handling, this issue would have been resolved. Unfortunately, the Organization has to make another trip to the Board.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "C.A. McGraw". The signature is fluid and cursive, with the first name "C.A." and the last name "McGraw" clearly distinguishable.

C.A. McGraw, Labor Member