

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37908
Docket No. SG-38258
06-3-04-3-159**

The Third Division consisted of the regular members and in addition Referee James E. Mason 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:

Claim on behalf of J. H. Weber, for 60 hours at the Signal Inspector's time and one half rate, account Carrier violated the current Signalmen's Agreement, particularly Rules 1F and 13, when on December 12, 2002 through December 20, 2002, the Claimant, who is a signal inspector, was released from working on a cutover at Park Interlocking and Carrier allowed another signal inspector, with less seniority, to continue to work on the project. Carrier's File No. 1359742. General Chairman's File No. N 1 13 331. BRS File Case No. 12851-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.

This case involves a situation in which, because of the amount of Signalman work which was necessary to be accomplished by the three regularly assigned Signal Inspectors on the Geneva subdivision, the Carrier on December 12, 2002, brought three additional Signal Inspectors from the Harvard subdivision and three additional Signal Inspectors from the Kenosha subdivision to assist in the completion of the necessary work in a timely manner. The Claimant in this case is one of the Signal Inspectors brought in from the Kenosha subdivision.

On December 13, 2002, after the combined work force had completed their work on December 12, 2002, it was determined that all nine Signal Inspectors were no longer needed, whereupon the three Signal Inspectors from the Kenosha subdivision and one of the Signal Inspectors from the Harvard subdivision were returned to their respective territories. The three Signal Inspectors regularly assigned to the Geneva subdivision and two of the Signal Inspectors from the Harvard subdivision continued working on the necessary work being performed on the Geneva subdivision.

By letter dated February 10, 2003, the instant penalty claim was initiated on behalf of the named Claimant alleging that, because he was senior to one of the regular assigned Geneva subdivision Signal Inspectors, he should have been permitted to remain on the Geneva subdivision to complete the project in question.

The Organization cites Rules 1F and 13 in support of its penalty claim. These Rules provide as follows:

"RULE 1 - SENIORITY CLASS ONE

The following positions will fall under Seniority Class One:

* * *

F. Signal Inspector: An employee assigned to and whose principal duties are to inspect and test systems, appurtenances and

appliances covered by this agreement and to make relay and other inspections and tests required by the carrier, but who may perform any Signal Department work. Such employees may make necessary repairs, replacements and adjustments in connection with their duties. Inspectors may work together or with signalmen, signal maintainers or assistant signalmen in connection with their inspections without being considered or requiring a foreman. This paragraph is not intended to prohibit inspections and tests made by supervisory personnel of the Signal Department to determine whether employees coming within the Scope of this agreement are properly installing or maintaining Signal Department apparatus, appliances, circuits and appurtenances, or by manufacturers' representatives, when accompanied by signal employee, to insure their equipment is operating as intended.

RULE 13 - OVERTIME

Time worked preceding or following and continuous with a regularly assigned eight (8) hour work period will be computed on actual minute basis and paid for at time and one-half rate, the regularly assigned eight (8) hour work period will be paid at straight time rate.

Time worked after sixteen (16) hours of continuous service will be computed on the actual minute basis and paid for at the double time rate until employee is released for eight (8) consecutive hours time off duty. For purposes of computing sixteen (16) hours of continuous service, as referred to herein, actual time worked will be counted from time on duty until relieved for eight (8) consecutive hours time off duty.

It is understood that nothing in this rule requires that the Carrier retain an employee on duty at punitive rate of pay.

In the application of this rule the starting time of new employees temporarily brought into the service in emergencies will be

considered as the time they commence work or are required to report for work.

Work in excess of forty (40) straight time hours in any work week will be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another, to or from a furloughed list, or where the rest days are being accumulated.

Employees worked more than five (5) days in a work week will be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work week except where such work on the sixth and seventh days is performed by an employee due to moving from one assignment to another, to or from a furloughed list, or where the rest days are being accumulated.

There will be no overtime on overtime; neither will overtime hours paid for, other than hours not in excess of eight (8) paid for at overtime rates on holidays, be utilized in computing the forty (40) hours per week, nor will time paid for in the nature of arbitraries, or special allowances such as attending court, investigations, coroner's inquest, boards of inquiry, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of payment for such hours, or where such time is now included in computations leading to overtime.

Where gang men are required to work overtime, the senior man in a class in the gang will be given preference to such overtime work."

There is no disagreement in the record to suggest or imply that any of the individuals involved in this case are anything other than fully qualified Signal Inspectors. Rule 1F has no bearing on this claim and reference thereto is therefore rejected.

There is not one scintilla of evidence in the case record, nor is there any substantiated contention by the parties to show that any overtime was worked by

any of the principals involved. Just how Rule 13 is applicable to the instant case is mysterious.

There is, however, evidence in the case record which clearly establishes that the Carrier's actions were proper and in compliance with the Rules and operating practices. That evidence is found in the form of an e-mail communication from an Organization officer in which it is acknowledged:

“... if the cutover or testing is done on the Geneva sub, the Geneva sub inspectors have preference. The same applies to the Kenosha sub and the Howard sub. The Inspectors headquartered on the subdivision have preference.”

This is exactly what happened in the instant case. The headquartered Geneva subdivision Signal Inspectors performed work on the Geneva subdivision. The Claimant was headquartered on the Kenosha subdivision. He was not aggrieved by the performance of Signal Inspector work by a junior Signal Inspector on his headquartered subdivision.

This claim has no merit and 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 22nd day of August 2006.