

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37910
Docket No. SG-38265
06-3-04-3-178

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
(
(CSX Transportation, Inc. (former Baltimore
(and Ohio Railroad)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (formerly Baltimore & Ohio):

Claim on behalf of V. K. Kennedy, for 24 hours at the time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 14(g) and Rule 29, when on August 6, 2002, through August 9, 2002, a junior employee was asked to perform overtime work during these evenings instead of asking the Claimant who is an Independent Signal Maintainer and is the next senior employee on the call list and was available and should have been afforded the overtime work opportunity. Independent Maintainers have always been called before the Leading Signal Maintainers. Carrier’s File No. 15(02-0179). General Chairman’s File No. BWE-02-12-02. BRS File Case No. 12951-B&O.”

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 dispute alleges a violation of Rules 14(g) and 29 of the Signalmen's Agreement. RULE 14 - OVERTIME AND CALLS reads, in pertinent part, as follows:

"(g) When overtime service is required of a part of a gang or group of employees, the senior employees of the class involved, who are available, shall have precedence of such overtime if they so desire."

RULE 29 - SENIORITY reads, in pertinent part, as follows:

"(a) Seniority shall consist of rights based on relative length of service of employees as hereinafter provided.

(b) There shall be five (5) seniority classes as follows:

- (1) Signal Foreman.
- (2) Leading Signalman and Leading Signal Maintainer.
- (3) Signalman, Signal Maintainer and Signal Inspector.
- (4) Assistant Signalman and Assistant Signal Maintainer.
- (5) Signal Helper."

The Claimant was an Independent Signal Maintainer with an assigned territory and tour of duty from 7:00 A.M. to 3:30 P.M. with Saturday and Sunday rest days. On the claim dates he performed service on his regular assignment including overtime hours on each of two of the claim dates. On those same claim dates, the Carrier assigned a Lead Signal Maintainer to work with and supervise a newly assigned Signal Maintainer who had not yet become fully qualified on his assigned territory. In the course of supervising the qualifying Signal Maintainer, the Lead Signal Maintainer accrued overtime hours on each of the four dates in question. The claim alleges that the Claimant should have been called from the "call-out" list to perform the overtime hours accrued by the Lead Signal Maintainer in his capacity as an overseer of the qualifying Signal Maintainer.

From our review of the fact situation and after considering the arguments advanced by the parties, it is concluded that the Rules relied upon by the Organization lend no support to its position.

Rule 14(g) specifically relates to overtime service required of a part of a gang or group of employees. This case involves an Independent Signal Maintainer and a Lead Signal Maintainer who was functioning as an instructor and overseer to a Signal Maintainer. Rule 14(g) has no application to that type of situation.

Rule 29 lists the seniority classes of Signal Department employees. Everyone involved in this dispute was assigned within the seniority classes that are listed in Rule 29. No one outside of the listed seniority classes was involved.

The Organization failed to carry the burden of proof which is its to carry in disputes of this nature. The Lead Signal Maintainer supervised the Signal Maintainer. There is nothing more than surmise and conjecture to suggest that the Lead Signal Maintainer performed anything other than the work he was assigned to do. Therefore, this claim must be denied for lack of proof.

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.