

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39146
Docket No. SG-38921
08-3-NRAB-00003-050361
(05-3-361)

The Third Division consisted of the regular members and in addition Referee Lisa Salkovitz Kohn 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 T. Renzi, for ten hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 13, when it used a junior man instead of the Claimant to wire switches and install switch rods at the new crossover plant at Peck Road on Saturday, May 8, 2004, and denied the Claimant the opportunity to perform this work. Carrier’s File No. 1401932. General Chairman’s File No. N 13 455. BRS File Case No. 13169-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 was at the time of this dispute assigned to the position of Signalman on Gang No. 3962. On Friday morning May 7, 2004, the Claimant called his Supervisor, the Manager, Signal Construction, and told him he would not be in to work that day. The Claimant said nothing about his availability to work over the weekend. The Manager was notified later on Friday that there was work available for Saturday May 8 and instructed the Signal Foreman to request the needed people to work on Saturday. No one contacted the Claimant to work. As a result, an employee junior to the Claimant was permitted to work overtime on May 8.

Rule 13 states: "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." The Organization contends that pursuant to Rule 13, the Carrier had an obligation to notify the Claimant of the work opportunity before working a junior employee, because he had never notified the Carrier that he would be unavailable for that work, and seeks as a remedy that the Carrier compensate the Claimant ten hours pay at his overtime rate to compensate for the lost opportunity. The Carrier responds that it has long been held that an employee on personal leave is not considered available to work until he returns to his regular assignment, which the Claimant did not do until the Monday following the overtime.

Preference for overtime assignments is a major benefit of seniority. However, numerous Third Division Awards establish that an employee on vacation or personal leave is not considered available for overtime until he returns to his regular assignment, and a Carrier is not required to call employees on vacation or personal leave for overtime work. See Third Division Awards 23198, 29092, 29261 and 31790.

The record indicates that the Claimant's Manager in the past has called in employees who have given management advance notice of their availability for rest day overtime work after a Friday lay-off, and has instructed employees to give that

advance notice in order to be considered. However, the Claimant never gave notice of his availability for work on his rest days after his lay off.

The Manager's accommodation did not change the parties' fundamental expectation that an employee on personal leave is not to be considered available for overtime until he returns to his regular assignment. The Carrier had no obligation to call him for rest day overtime work ahead of the junior employee.

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 7th day of July 2008.