

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 39609  
Docket No. SG-38657  
09-3-NRAB-00003-050037  
(05-3-37)

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(Elgin, Joliet and Eastern Railway Company)

**STATEMENT OF CLAIM:**

**"Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Elgin, Joliet & Eastern:**

**Claim on behalf of G. P. Seiler and C. B. Woodbridge for nine hours overtime pay on November 8, 2003, and seven hours overtime pay on November 15, 2003, as well as G. R. Szymoniak for seven hours overtime pay on November 15, 2003, account Carrier violated the current Signalmen's Agreement, particularly Rule 65, when it used junior men instead of the Claimants for weekend overtime assignments and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 144-618. General Chairman's File No. 04-07-EJE. BRS File Case No. 13077-EJ&E."**

**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 the Organization's claim that the Carrier violated Rule 65 of the parties' Agreement when it failed to offer overtime opportunities to employees assigned to Gang 107, based in Joliet, Illinois, and instead offered the overtime to employees on Gang 106, based in Gary, Indiana.**

**The work at issue involved two dates and two locations. On November 8, 2003, Gang 106 worked overtime at the Barrington E-Block in Barrington, Illinois; on November 15, 2003, Gang 106 worked overtime at Westgate in Kirk Yard, which is located in Gary, Indiana.**

**The Organization's chief contentions are that 1) Rule 65 mandates what can essentially be described as "cross utilization" among gangs, meaning the seniority lists from Gangs 106 and 107 are properly merged in these circumstances and the senior men from both gangs offered overtime first and 2) such an agreement was reached at the local supervision level, but was not honored by the Carrier.**

**Rule 65 (a) states: "Employees senior in their respective gangs shall be given preference to overtime work in such gangs."**

**In amplifying its argument, the Organization cites to several Board decisions, each of them focused on the term "shall." The question here, however, is not whether there is an obligation to give such preferences, but rather, to whom they must be given.**

**The plain language inescapably leads to the conclusion that gangs are assigned overtime and that within each individual gang, employees are offered overtime based on seniority. Stated simply, the language does not call for merging seniority lists across gangs when overtime is assigned (i.e., assigning overtime work to two different gangs when there is insufficient work for more than one gang).**

Even assuming a local supervisor attempted to enter into an agreement with local Organization officials, any such agreement fails not simply because the local supervisor lacked apparent or real authority (as the Carrier claims) but because it is axiomatic only the principals to the Agreement have the power to modify clear contract language and, under almost all circumstances, must do so in writing. Because there is no evidence of any such agreement, the clear language prevails and operates to deny the claim.

Another issue – not developed here and not specifically part of the original claim – is the extent to which a particular gang receives preference for overtime work over another gang on the basis of their working that particular job on straight time. We make no finding regarding that issue because it was not presented in the original claim or developed while the claim was being handled on the property.

**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 April 2009.**