

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39651
Docket No. SG-38808
09-3-NRAB-00003-050218
(05-3-218)

The Third Division consisted of the regular members and in addition Referee Susan R. Brown 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:

(1) Claim on behalf of H. Merkin and P. D. Sclafani for seven and one-half hours each at their respective overtime rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 1, 13, 15, and 80, when it replaced the Claimants, who were working an overtime shift, with junior employees on January 29 and 30, 2004, and denied the Claimants this work opportunity. Carrier’s File No. 1395932. General Chairman’s File No. N 13 15 425. BRS file Case No. 13177-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 Claimants are Signal Inspectors with 1979 and 1980 seniority dates respectively whose regular working hours in January 2004 were 7:00 A.M. to 3:30 P.M. On January 27 and 28, as a result of a serious snowstorm, both men, along with most Signal employees, were assigned overtime to ensure the proper operation of power-operated switches and highway grade crossing warning devices entailing the removal of snow and ice. Late on January 28, the Claimants were instructed by their Manager to rest and return to their normally scheduled hours of work on January 29. Two Assistant Signalmen with 2002 seniority dates were assigned to work overtime on January 29 and 30 performing storm-related duties. The Claimants worked no overtime on those days.

The Organization grieved this matter claiming that seniority controls the assignment of overtime, citing prior Third Division Awards to support its position. The Carrier denied the claim, asserting that this work is not craft specific, but is more usually performed by a Signal Maintenance gang. According to the Carrier, assigning this overtime to the Claimants would have made them unavailable for their regular shifts under the Hours of Service Act. The Organization asserts that both Inspectors were months ahead of their testing schedules, a fact with which the Manager was well-acquainted.

Rule 1 describes the Signal Inspector's principal duties as follows: "inspect and test signal systems, appurtenances and appliances covered by this agreement and to make relay and other inspections as required by the carrier." The description adds that Inspectors "may perform any Signal Department work." The Scope Rule makes no mention of snow removal as such. Rule 13 states in pertinent part: "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." Carrier records indicate that the Inspectors were not part of the Signal Maintenance gang.

Although various time logs contain a discrepancy about the actual overtime hours worked by the Claimants during the storm and its immediate aftermath, the record indicates the following (where there are discrepancies in the record, both figures are shown, one in parentheses):

Employee	1/26	1/27	1/28	1/29	1/30
Claimant Merkin	8 (8.5)	12	2 (2.5)	0	0
Claimant Sclafani	0	8 (8.5)	3 (3.5)	0	0
Assistant Signalman Jacquez	0	7	7	6	5
Assistant Signalman Chipules	0	0	7	6	5

There is no dispute that the two Assistant Signalmen worked more overtime than the Claimants on January 28, as well as on January 29 and 30.

The Signal Inspector classification description makes clear that the Inspector's principal job is to inspect various signal devices. Although an Inspector may be assigned other Signal duties, his higher classification emphasizes his inspection knowledge and skills. Thus, the work at issue – snow removal – is only incidental to an Inspector's work.

Although the Board acknowledges and respects the importance of seniority in the Agreement, we find that the two Awards relied upon by the Organization are not applicable in this case. In Third Division Award 30833, the claimant and the junior employee were both Signalmen; the claimant was a lead and the other was not. The overtime assigned the junior employee in that case constituted the regular duties of both classifications and the Board concluded that in light of the importance of seniority, the Carrier had no justification for failing to call the senior employee to perform the work. Similarly, in Third Division Award 33909, the claimant was the senior Signalman on call and the Board once again found that seniority must be honored.

The circumstances in this case are not the same. Although there is some area of overlap in their duties, Signalmen and Inspectors normally do not perform the same work; signal maintenance is generally performed by Signalmen, not Inspectors. Inspectors, however, may be expected to do such work when the need arises as it does during a snow emergency.

Although the Carrier argued on the property both that it could make the overtime assignments as necessary because an emergency existed and that it could return the Claimants to their regular jobs because the emergency had ended, we

conclude from the record that by January 29, although some storm-related work remained to be accomplished, the emergency was over. In that light, we conclude that the overtime work on January 29 and 30 was routine Signalman work and the Inspectors had no standing to demand the overtime based on seniority. It was not improper for the Carrier to return the Inspectors to their normal assignments and utilize Signalmen for the remaining necessary maintenance work.

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 April 2009.