

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 39655  
Docket No. SG-39201  
09-3-NRAB-00003-050475  
(05-3-475)

The Third Division consisted of the regular members and in addition Referee Joyce M. Klein when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(Massachusetts Bay Commuter Railroad Company)

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Massachusetts Bay Commuter Railroad (MBCR):**

**Claim on behalf of N. Guliano, for four hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Appendix B-4, when it called another employee instead of the Claimant for planned overtime service at CPFBY on March 17, 2004, from 3:30 p.m. to 7:30 p.m. Carrier’s File No. MBCR-BRS-11/0704. General Chairman’s File No. NY32101088-120047. BRS File Case No. 13324-MBCR.”**

**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 assigned to the position of Signalman on Crew CFA-2 with headquarters at Rolands Street on March 17, 2004 and was working straight time on snow duty. The Boston area experienced a severe snowstorm that day which continued into the evening hours. When the Claimant's supervision sought him to determine whether he was available to work overtime, he was not on the property having left work at the end of his shift without inquiring as to whether he was needed for overtime snow duty. Another employee working on a construction force, rather than in a maintenance position, was offered the overtime opportunity. Another employee was called for snow duty at CPFBY from 3:30 P.M. to 7:30 P.M.

The Organization asserts that the Claimant was available for work and should have been called and is thus entitled to compensation for the four hours of overtime for this loss of a work opportunity. The Organization cites Appendix B-4, Section 8, which provides "employees will be called from the appropriate list for work in the order in which their names appear on the list."

The Carrier argues that the Claimant had the responsibility to inform management personnel that he was available to continue work that day, but instead he left work. The Carrier asserts that the Organization has not met its burden of proof.

The Organization's claim that the Claimant is entitled to overtime rests solely on the fact that supervision did not specifically ask him to work overtime during a snowstorm. Although a snowstorm was in progress at the end of the Claimant's shift, he left work without determining whether his assistance was needed in continuing snow removal. The Organization has not provided evidence of the Claimant's relative seniority vis a vis that of the employee who ultimately performed the snow duty on overtime. Nor has the Organization demonstrated that the Claimant had a greater right to that overtime opportunity or shown that the Carrier violated procedures for offering overtime work. The Organization has not shown that the Claimant was entitled to the overtime pursuant to any list that might exist in accordance with Appendix B-4, Section 8.

**Form 1**  
**Page 3**

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**For these reasons, the burden of proof has not been met. We, therefore, deny this claim.**

**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.**