

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40607
Docket No. SG-40742
10-3-NRAB-00003-080623**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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:

Claim on behalf of S. Labelle, for five hours at his overtime rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 16, when it failed to call the Claimant on a trouble call at Newkirk Rd., Mile Post 671.14, for crossing trouble on August 7, 2007 at 1:30 a.m. and instead called another employee causing the Claimant a lost work opportunity. Carrier’s File No. 1481893. General Chairman’s File No. UPGCW-16-1478. BRS File Case No. 14072-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.

This claim protests the failure of the Carrier to call the Claimant, the only available Signal Maintainer, for a trouble call on August 7, 2007 when the incumbent Maintainer was unavailable, and instead called a Signal Electronic Technician (ET) junior to the Claimant to reset the breaker for the AC power to the crossing. It relies upon the following Agreement language to support the Claimant's entitlement to the work assignment:

"RULE 16 - SUBJECT TO CALL

A. Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and will notify the person designated by the Management of their regular point of call. When such employees desire to leave such point of call for a period of time in excess of two (2) hours, they will notify the person designated by the management that they will be absent, about when they will return, and, when possible, where they may be found. Unless registered absent, the regular assignee will be called, except when unavailable due to rest requirements under the Hours of Service Act, as amended by Public Law 94-348.

* * *

Note 2: The Local Chairmen and Local Management may agree to establish lists or other means in which to determine which employees are to be called under this rule, subject to review by the General Chairman and Labor Relations."

The Organization argues seniority is the cornerstone of the Agreement and must have privilege, citing Third Division Awards 19758, 29536 and 33909. It asserts the Claimant was senior to the ET called, was available, more experienced (he was an ET previously) and closer to the trouble call, relying upon a written statement of the Claimant that he lives in the same town as the ET and technically closer to the problem area. The Organization alleged that the Manager refused to sit down with the Local Chairman to agree upon a call list, and questioned why the

Carrier would care who is called as long as the senior employee is qualified and available to handle the trouble call.

The Carrier contends that Rule 16 obligates it to contact the regular assignee on the territory for a trouble call, but is silent regarding who may be called next if the regular employee is unavailable, leaving to the Carrier the ability to determine who is to be the alternate with due regard to operational requirements, citing numerous Awards including Third Division Awards 37100 and 37218. It notes that there is no reference to seniority within Rule 16, and there was no agreed call list in this case. The Carrier points out that trouble calls are emergency situations, and it has no obligation to allow a dangerous condition to continue while it calls a senior Maintainer from a different territory. The Carrier specifically distinguishes the cases relied upon by the Organization and argues that the Organization failed to sustain its burden of proving a violation of the Agreement.

A careful review of the record convinces the Board that the Organization has not met its burden of establishing a violation of the Agreement in this case. As in Third Division Awards 40587 and 40588, this case involves a trouble call that required immediate action, and its resolution is based upon the clear language of Article 16A, establishing that absent an agreed upon call list, management has the prerogative to choose who will be called once the incumbent is found to be unavailable. The finding that seniority is not a governing requirement in this Rule once the Carrier has fulfilled its responsibility to the incumbent set forth in Award 40587 is equally applicable herein. See also, Third Division Awards 37100 and 37218. The fact the Claimant asserts he lives closer to the location of the trouble call than the junior employee does not impose an obligation on the Carrier not found in the Agreement. The Organization has not met its burden of proving that the Carrier violated the Agreement by failing to call the Claimant from a different territory for the trouble call in issue.

AWARD

Claim denied.

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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 27th day of August 2010.