

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40614
Docket No. SG-38606
10-3-NRAB-00003-040620
(04-3-620)**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp.:

Claim on behalf of F. T. Middlecamp Jr., for 64 hours pay at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rules 20(i) and Appendix B-4, when on June 8, 9, 10, 11, 15, 16, 17, and 26, 2003, Carrier allowed members of Gang E-092 to work 8 hours overtime per day on the Claimant’s assigned section instead of allowing him the opportunity to perform the overtime work. Carrier’s File No. NEC-BRS(S)-SD-1025. General Chairman’s File No. JY32010165-65041. BRS File Case No. 13021-NRPC(S).”

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 Organization asserts a Carrier violation of Rules 20(i) and Appendix B-4 in the assignment of overtime to Gang E-092, rather than the Claimant. It argues several points on the property. The Organization maintains that the work was performed on the Baltimore tunnel - the Claimant's regular assigned territory. Neither the Claimant nor the Gang the Carrier assigned had worked the straight time hours preceding the need for overtime. Accordingly, neither was entitled under Appendix B-3 to the right to overtime following straight time hours. Because Appendix B-3 is inapplicable, Appendix B-4 is applicable and holds that because the Gang was neither unassigned, nor working under 40 hours per week, the work should have been performed by the regular employee as per Rule 20(i). That regular employee was the Claimant, who was available and on whose assigned territory the work was performed. The Claimant should have been given this overtime right, before the Gang was allowed the work. He was denied his rights to overtime.

The Carrier denies the applicability of Rule 20(i) to this dispute. It argues that the members of Signal Gang E-092, and not the Claimant, were the regular assigned employees working the installation in the Baltimore tunnel. The Claimant was not the regular assigned employee working this tunnel job, because he did not work with the Signal Gang involved. It argues that Rule 20(i) which applies to continuation of a regular assignment does not apply and neither does Appendix B-4, because it is applicable to overtime calls involving trouble. This was not a trouble call. In fact, the applicable Rule is Rule 27, because Gang E-092, in order to perform the work had its shift changed. They were compensated at the overtime rate due to Rule 27, not 'Overtime Preference - Continuous with Tour of Duty' under Appendix B-3, or 'Trouble Call Procedures' under Appendix B-4.

The Board notes the facts and the Rules disputed herein. The two major disputed Rules state, in pertinent part:

"Rule 20(i) - Work Week

Where work is required by the Company to be performed on a day which is not part of any assignment, it may be performed by an

available unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases, by the regular employee (See Appendix B-4 or B-5, as applicable).

Rule 27 – Changing Shifts

An employee changed by direction of management from his regular position to another shift shall be paid at the time and one-half rate for work performed until returned to his regular position.”

The Board’s study of the on-property record documents that Gang E-092 was assigned to install a new communications system in the Baltimore tunnels. This was the Gang’s regular assignment and those compensated were the regularly assigned employees of this Gang. The Claimant was neither assigned to the Gang, nor involved in the installation of the new communications system. Although the Claimant was a Signal Section Maintainer, there is no evidence in this record that he normally performs the work disputed in connection with communication systems, nor that any Rule provides him a demand right to the work prior to the Gang.

Further, the Board has studied the Rules, supra. Nothing in Rule 20(i) coupled with Appendix B is shown to provide a right to the Claimant to the overtime rate. Most importantly, there is nothing in this record to demonstrate that this was overtime work. Rule 27 involves a change of shifts. The record indicates that the Gang had to be changed from its normal hours. As indicated, “. . . because traffic conditions do not permit access to the tunnel during daylight hours, the actual installation work had to be performed at night.” This resulted in a shift under Rule 27 and the payment of time and one-half is required under the Rule, which does not make it overtime.

Nothing in this record indicates that the Carrier violated any Rule. The Board finds no evidence that the Claimant had any rights to consideration for this work under the instant circumstances. Nor is there any proof that this was an “overtime assignment” as contemplated by the Agreement. Accordingly, the Board finds that the Carrier’s actions were appropriate and proper. The claim must fail.

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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 27th day of August 2010.