

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40620
Docket No. SG-38674
10-3-NRAB-00003-050094
(05-3-94)

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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 J. G. Thomas III, for three 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 a junior man on the altered call out list and failed to call the Claimant for a trouble call on July 28, 2003, causing a missed work opportunity for the Claimant. Carrier’s File No. NEC-BRS(S)-SD-1030. General Chairman’s File No. JY32101071-18043. BRS File Case No. 13071-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.

This is one of three claims (see Third Division Awards 40618 and 40619) under consideration for which the Carrier denies applicability because of agreement between the parties consistent with Appendix B-4 to calling procedures. In this case, Claimant J. G. Thomas, III was not called out to respond to a trouble call on the Penta system at Overbrook Tower, Philadelphia, on July 28, 2003. Instead, the call went to junior employee H. Campbell.

The Organization alleges that the Carrier violated Appendix B-4 when the Claimant was placed improperly on the call out list and denied his right to perform service for the trouble call.

The Carrier insists that it complied with the proper calling procedures when it placed Campbell ahead of the Claimant. Appendix B-4 reads, in pertinent part, as follows:

“Procedure for Calling C&S Department employees for trouble involving Maintainer’s work outside their regular working hours.

1. Subject to other provisions of this Agreement, a calling arrangement will be established by the Assistant Engineer C&S/ET and the Organization’s designated representative jointly.

(a) The calling agreement will be subject to the concurrence of the General Chairman and the Director-Labor Relations.”

The procedure for calling out employees is argued by the Carrier to be agreed upon for this territory as follows. Division forces would be called first, then system forces would be called and finally those employees working in system offices. The Carrier contends that changes were made beginning with fiscal year 2003, whereby construction forces were reassigned from “system” to “division.” The Claimant worked in the White Room Communications Control Center. Campbell worked on construction forces, which although previously on this territory belonged to system forces, was now moved to the division forces. Accordingly, Campbell, who was a part of the system forces, was senior to the Claimant on the call out list.

The Board searched the full record for evidence that the Claimant was next out under Appendix B-4. The Organization argues that the Claimant's rights were violated due to the fact that the calling procedures which had been mutually agreed under Appendix B-4 were altered by Senior Engineer Bryan without consent of the Organization.

The Board's careful review of the record evidence reveals that the Organization provided the seniority list, which clearly indicates that the Claimant is ranked sixth and Campbell is ranked 32nd. The Organization alleged that Senior Engineer Bryan altered the agreement between the parties and thus violated Appendix B-4. It clearly provided a Rule and evidence to provide a prima facie case.

The Carrier contended that the C&S office made "periodic updates to reflect employee changes in positions or qualification status" and did not violate the agreement when it changed the call out list. The Carrier asserts that "the last agreement . . ." was between the Carrier and "local Chairman Mr. Jim Steffen . . . that all qualified active division forces would be placed before Qualified System employees for Division Call-Outs."

The Carrier raised an affirmative defense which was rejected by the Organization. The Board finds no evidence whatsoever to prove the Carrier's assertions. There is no proof in the record that the call-out procedures were properly changed so as to permit Campbell to have the first right to the overtime instead of the Claimant. In fact, the Board finds that the Carrier had no right to change the procedures which had been in effect when it permitted the junior employee to be called in preference to the Claimant. Although the Carrier finds the change agreed to, the Board finds no proof of said agreement with the Local Chairman. Once denied, it was incumbent upon the Carrier to provide evidence, beyond assertions (Third Division Awards 15444, 18447 and 20107). There is none in this record and, accordingly, the claim must be sustained at the straight time rate of pay.

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AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 27th day of August 2010.