

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40621
Docket No. SG-38744
10-3-NRAB-00003-050154
(05-3-154)

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 G. Tyson, for 27 hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Appendix B-3(b) and Rule 56(a), when it used a Maintainer from Test Gang #082 instead of the Claimant who was a Maintainer on Gang #K032 supporting the M/W Department at Shore and Holmes Interlockings on August 19, 20 and 21, 2003, and denied the Claimant the opportunity to perform his work. Carrier’s File No. NEC-BRS(S)-SD-1033. General Chairman’s File No. JY32101074-18044. BRS File Case No. 13074-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 alleges a violation of Appendix B-3 (b) which states that, "If additional employees are required for such Overtime, other qualified employees in the gang will be offered the overtime in seniority order." In this instance, the Claimant belonged to Gang No. K032. On the nights of August 19, 20, and 21, 2003, from 10:00 P.M. to 7:00 A.M., Maintainer Ludlow from Test Gang No. 082 worked at the overtime rate. The Organization maintains that the Claimant should have been called to perform the work.

The Carrier confirms that the Claimant was not called to perform support for the Track Department at the Shore and Homes Interlockings on the stated dates. However, it does not agree that Appendix B-3 (b) is applicable. It argues that it properly followed Appendix B-4 (Call Out) for the following reason:

"As no gang or employee had been assigned to this work during their regular tour of duty, consistent with the established practice, available qualified employees in the territory were called out in seniority order."

The Board carefully studied the record. Appendix B-3 (b) is contiguous to (a) and is not on point with these facts. This dispute did not occur at the end of the Claimant's tour of duty with Gang No. K032 at the Shore and Homes Interlockings; nor did it involve work that he previously performed during his regular tour of duty. Therefore, the Claimant does not have a demand right to the work as per Appendix B-3 (a). Because Part (a) is not applicable, Part (b) is not determinative.

Given the record, the pre-planned overtime is not governed by Appendix B-3. There is no showing that the Claimant was involved in any work associated with the Shore and Homes Interlockings project in support of the Track Department during his regular tour of duty. Accordingly, the senior qualified employee on the territory would have a right to the work. The facts at bar indicate that the Claimant is not senior to Ludlow on this territory. The Board's review concludes that there is no procedural reason to determine the claim on reasons other than the merits. Accordingly, the claim is denied.

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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.