

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40638
Docket No. SG-40499
10-3-NRAB-00003-080364

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 E. R. Sherrod, for four hours at his time and one-half rate of pay account Carrier violated the current Signalmen’s Agreement, particularly Appendix B4, when it used a junior employee to perform overtime service on June 18, 2006 from 11:00 p.m. through 3:00 a.m. and denied the Claimant the opportunity to perform this work. Carrier’s File No. BRS(S)-SD-1099. General Chairman’s File No. AEGC-07-65-2. BRS File Case No. 13940-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 a contract interpretation disagreement involving the instant facts and history of application. The instant dispute arose on June 18, 2006 when the Carrier assigned junior employee Middlecamp to perform overtime from 11:00 P.M. until 3:00 A.M., rather than the Claimant. The Organization alleges a clear violation of seniority assignment under Appendix B-4, Item 8 which states, in pertinent part, that, "Employees will be called from the appropriate list for work in the order in which their names appear on the list." Because the Claimant appeared senior on the list, the Carrier "will" call the Claimant and did not fulfill its negotiated obligation.

First, the Carrier asserts that it followed Appendix B-4, Item 6 language holding that "the signal maintainer assigned to that position in the section involved . . . will be listed first on the calling list for his section." Middlecamp was the assigned Maintainer headquartered at Bayview Interlocking, the section involved. Because he was assigned to the section where the trouble truck was headquartered, he was listed first out on the calling list ahead of the Claimant.

Second, the Carrier argues that not only is this action of filling the overtime assignment consistent with the Appendix language, but also there is clear practice. The Organization and Carrier have engaged in this exact action for a very long time without dispute.

The Board has given careful consideration to the full facts and arguments presented. We are persuaded that the language of Item 6 must prevail. There is no inconsistency between Appendix B-4, Item 6, and the actions of the Carrier in its assignment. Middlecamp's regular assignment included Bayview Interlocking, the section where the trouble truck was headquartered. The Claimant did not cover Bayview Interlocking as part of his territory. Although the trouble truck is dispatched to any needed location on the entire Sub-division, it is a part of Maintainer Middlecamp's territory.

There is no language in Appendix B-4 specifying direct applicability to this instant set of conditions. There is no evidence submitted by the Organization that when a trouble truck assignment covering an entire Sub-division exists, entitlement

is vested in the senior employee. Interpretation to that conclusion must be supported by some practice or such clear applicable language as to be explicit.

In this instance, the language of the entire Appendix has been considered. Item 8 and Item 6 appear to conflict with each other, but there is no clear history or evidence documenting under these circumstances that Item 8 should prevail. In stark contrast, there is no rebuttal to two fundamental points raised by the Carrier.

First, the Carrier stated that “. . . the long-standing practice of calling overtime in the manner that was done in this case has gone undisputed by the Employees for approximately fifteen years.” Clearly, this interpretation was accepted without challenge for 15 years until it has resulted in acquiescence giving rise to an established way of doing things. Practice is often difficult to determine, but in this instant case it has clear probative support.

Second, the Carrier pointed out that the Claimant held this very assignment now held by Section Maintainer Middlecamp for trouble truck work at the very same location and under the very same circumstances from November 4, 2004 until February 2, 2006. The Carrier stated that for all that time, the “Claimant, like Mr. Middlecamp, was called for trouble truck overtime ahead of maintainers reporting at the same headquarters (Bayview Interlocking) who were senior to him.” Further, the Carrier provided proof that the Claimant was offered and did accept holiday coverage ahead of senior employees when he held the same position as Maintainer Middlecamp.

The Board carefully considered the Organization’s arguments that such evidence does not overcome the fact that the Claimant is senior on the Call Out List ahead of Middlecamp. We studied the Organization’s major argument that the trouble truck is a vehicle and its location does not supercede seniority. The Organization maintains that just because Middlecamp’s trouble truck is located at the Bayview Interlocking does not give him first call out under Item 6. After thorough consideration of all facts and arguments, the Board is persuaded that the Carrier’s argument must prevail both for general language and 15 years of accepted practice, which has established a mutually acceptable interpretation of the Agreement. The claim must be 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.