

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40639
Docket No. SG-40584
10-3-NRAB-00003-080495**

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 W. J. Davies, for six hours and 30 minutes at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Appendix B3 and B4, when it used a junior employee instead of the Claimant to fill a vacant position on the Morrisville Trouble Truck starting at 11:30 PM on January 16, 2007 and denied the Claimant the opportunity to perform this work. Carrier’s File No. BRS(S)-SD-1103. General Chairman’s File No. AEGC-07-102-04. BRS File Case No. 13942-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 argues that on Tuesday, January 16, 2007, an open third trick Trouble Truck shift was erroneously assigned to Maintainer Lynn. Claimant Davies was senior and the Carrier failed to call him for the overtime assignment as required by Appendix B-3 and Appendix B-4. The substance of the Organization's argument is that the Claimant is senior to the employee used, who only works the Trouble Truck assignment on Saturdays and, given his seniority, the Claimant should have been the employee who filled the overtime vacancy on the claim date.

The Carrier argues that no violation occurred due to the fact that the junior employee (Lynn) is regularly assigned to the first shift Trouble Truck at Morrisville on Saturdays. In fact, the Carrier points out that Maintainer Lynn "normally and customarily performs service on the Trouble Truck as part of his regular assignment." The Claimant does not work the Trouble Truck as part of his regular tour of duty, but rather works the Morris Tower. The Carrier argues that the employee selected was first out for the vacant shift because he was assigned to work the Trouble Truck. Only if he refused and all others assigned to the Trouble Truck had refused, would those Maintainers assigned to other work that do not usually and customarily work the Trouble Truck throughout the week have been offered the overtime in seniority order.

The Board studied the entire record, including issues related to seniority on the call out list for the Morrisville Section, seniority to the Saturday Trouble Truck and the ability to cover the Claimant's regular position. Appendix B-3 (Overtime Preference – Continuous with Tour of Duty) and B-4 (Procedure for Calling C&S Department Employees for Trouble involving Maintainer's work Outside Their Regular Working Hours) state, in pertinent part:

"Appendix B-3

(a) When it is known in advance of the end of a tour of duty that a portion of a gang is to be worked on a subsequent tour of duty . . . those with the greatest seniority in the class who were actually performing the work prior to the overtime will be given the first opportunity for the overtime.

(b) If additional employees are required for such overtime, other qualified employees in the gang will be offered the overtime in seniority order.

Appendix B-4

2. Subject to other provisions of this Agreement, a calling arrangement will be established by the Assistant Division Engineer C&S/ET and the Organization's designated representative jointly.
6. The Signal Maintainer assigned to that position in the section involved will . . . be listed first on the calling list for his section.
8. Employees will be called from the appropriate list for work in order in which their names appear on the list."

The Board carefully studied the language, supra and the evidence of record. It is not enough that the Claimant is senior to Maintainer Lynn to prove applicability to these facts. In this instance, the Carrier argued that the manner in which the above sections of Appendix B-3 and Appendix B-4 were applied was to permit employees who usually and customarily perform Trouble Truck work to be the first persons called to work overtime on the Trouble Truck; a proper conclusion from Appendix B-3 and Appendix B-4. Maintainer Lynn was assigned to the Trouble Truck.

During progression of the claim on the property, the Carrier asserted that if this application of the Agreement was improper, Appendix B-4 provided the mechanism to change the calling arrangement (see Section 2). Be that as it may, there is no proof in the record presented by the Organization to demonstrate that the call out procedure was improper. The Carrier called out Maintainer Lynn whose position included the section and Trouble Truck involved. He was the incumbent of a position assigned to the work and the offer of overtime was consistent with the language of Appendix B-3 and Appendix B-4. In fact, the vacancy was offered and refused by others with less seniority than the Claimant due

to the fact that they also cover the Trouble Truck as part of their regular assignments; such was also objected to by the Organization. The Board finds the Carrier's actions proper.

Therefore, it is unnecessary for the Board to concern itself with issues of Saturday preference to overtime or the ability to cover assignments. There is no proof of a Carrier violation of the Agreement. If there are problems with the seniority assignments to the existing call out procedures, the mechanisms of change rest with the parties under Appendix B-4, supra.

Accordingly, because the Claimant does not cover the Trouble Truck during his workweek and is not assigned to the Trouble Truck on Tuesdays (unlike Maintainer Lynn who has such as an integral part of his usual assignment) the Board finds no violation of the Agreement. Nor does the Board find proof that either the normal calling procedures have been violated, or that the calling of Maintainer Lynn first, violated the negotiated provisions, because Lynn's job includes the Trouble Truck, whereas the Claimant's job does not.

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.