

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40640
Docket No. SG-40654
10-3-NRAB-00003-080536

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 E. R. Sherrod, for eight 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 September 4, 2006 from 7:00 a.m., through 3:00 p.m. and denied the Claimant the opportunity to perform this work. Carrier’s File No. BRS(SD)-1100. General Chairman’s File No. AEGC-07-65-03. BRS File Case No. 13939-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 instant case involves which employee has the right to an overtime assignment involving the trouble truck. This case is a companion to Third Division Award 40638. Specifically, on September 4, 2006, the Carrier called Middlecamp to perform overtime service from 7:00 A.M. to 3:00 P.M. ahead of the Claimant. Maintainer Middlecamp, the regular incumbent assigned to the section in which the trouble truck was headquartered, was junior to the Claimant.

In these facts, Middlecamp worked as Section Maintainer “covering the territory from River Interlocking NBHS excluded to South Portal Union Tunnel.” The headquarters of the trouble truck was Bayview Interlocking, a point between River and Union Interlocking, i.e., the territory to which Middlecamp was assigned as Section Maintainer. The Claimant’s territory did not include Bayview Interlocking where the trouble truck was headquartered. The employee working the trouble truck assignment reports to the headquarters and then is sent to any area needed.

In this case, the Carrier argued that the Signal Maintainer, whose territory included the headquarters of the trouble truck, was called for overtime for the trouble truck assignment. Because Middlecamp was assigned to Bayview Interlocking, he was called. The Carrier finds support for its actions in Appendix B-4, paragraph 6, which states: “The Signal Maintainer assigned to that position in the section involved will, if he has added his name in accordance with item 5 above, be listed first on the calling list for his section.”

The Organization, here as in Award 40638, argued that such assignment violated Appendix B-4, particularly paragraph 8: “Employees will be called from the appropriate list for work in the order in which their names appear on the list.” Although the language is clear (“will be called . . .”) the Carrier did not call the senior employee, i.e., the Claimant. In fact, the Carrier violated the overtime call out by assigning Maintainer Middlecamp, a junior employee. The Organization argued that where the trouble truck is headquartered does not overcome seniority.

The Board again studied this record and finds the Organization’s arguments appealing. We certainly find seniority critical in all labor agreements. The Board also notes the mandatory “will” in paragraph 8 and the same “will” in paragraph 6. We studied the numerous Awards cited by the parties, as well as the proofs. We note that Appendix B has been considered in its entirety and we arrive at the same conclusion as we did in our Award 40638.

There, as here, the facts reveal that the Carrier produced unrefuted evidence that there has been a 15-year well-established past practice supporting the Carrier's interpretation of the Agreement. In those years, when overtime was required on the trouble truck assignment, the Section Maintainer whose territory included Bayview Interlocking was called. Middlecamp was, therefore, called for the assignment. While the facts indicate that other Maintainers may have been senior and, in fact, the Claimant was senior, the assignment has been made to the Maintainer responsible for the section where the trouble truck was headquartered; in this instance Bayview Interlocking. The Claimant was not the Section Maintainer for that territory.

In this decision, the Board finds that there is a well-established practice proven in this record. We note that the Claimant gained from the very practice he now objects to when he held the very same position as Maintainer Middlecamp. Further, the Board finds that acquiescence for more than 15 years, coupled with the fact that there was mutual agreement, constrains the Board from ruling otherwise. The claim must be denied for these and the reasons previously indicated in Award 40638.

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.