

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40848
Docket No. SG-40923
11-3-NRAB-00003-090231**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of T. L. Giltner, for 48 hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 16, 40 and 80, when it used junior employees instead of the Claimant for overtime service on the Claimant’s assigned territory on December 15 and 16, 2007, and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 1493817. General Chairman’s File No. UPGCW-16-1250. BRS File Case No. 14144-UP.”

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 claim protests the failure of the Carrier to call the Claimant for weekend overtime work of refueling generators to ensure that standby power was carrying the signal systems in response to an extensive ice storm creating signal failures at more than 150 locations, when he was the regular Signal Maintainer assigned to the territory, and the Carrier's use of junior employees from off territory for this overtime work assignment. It relies upon Rule 40, Seniority, as well as the following Agreement language to support the Claimant's entitlement to the work assignment:

"RULE 16 - SUBJECT TO CALL

A. Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and will notify the person designated by the Management of their regular point of call. When such employees desire to leave such point of call for a period of time in excess of two (2) hours, they will notify the person designated by the management that they will be absent, about when they will return, and, when possible, where they may be found. Unless registered absent, the regular assignee will be called, except when unavailable due to rest requirements under the Hours of Service Act, as amended by Public Law 94-348.

* * *

Note 2: The Local Chairmen and Local Management may agree to establish lists or other means in which to determine which employees are to be called under this rule, subject to review by the General Chairman and Labor Relations."

The record reflects that the Claimant's normal work schedule is from Monday to Friday, and he was observing his required Hours of Service rest period when his Manager asked for volunteers interested in weekend overtime and created the weekend schedule for 7:00 A.M. to 7:00 P.M. and 7:00 P.M. to 7:00 A.M. shifts for such volunteers. It appears that when the Claimant returned to work after the schedule was created, he asked and was told that the schedule would be honored.

The Claimant's Manager stated that the Claimant had four and one-half hours of overtime on December 16, 2007, and checked himself out of work from 1:22 P.M. to 8:00 P.M. on December 15, and from 1:54 P.M. to 7:00 P.M. on December 16, indicating his lack of interest in working the weekend.

The Organization argues that seniority governs in determining preference to overtime work, and that the Agreement must be applied as written, citing Third Division Awards 10888, 19695, 30833 and 35503. It takes issue with the fact that an emergency still existed at the time of this overtime work, asserting that the volunteer call was for work the following day, and the signal system was operating by this time. Even in an emergency situation, the Organization relies upon Rule 16(A) to establish the Claimant's preference for the overtime assignment, because he was the senior and regularly assigned Maintainer on this territory, was not registered absent, and was available to perform the work in dispute.

The Carrier contends that this was scheduled overtime in response to an emergency situation created by the ice storm, which resulted in a widespread signal system failure and the need to assure that backup power generators had fuel to run the system. In such circumstances, the Carrier asserts that it has wide latitude to act quickly and assign available forces to address the issue, citing Third Division Awards 22755 and 37529. It notes that Rule 16 does not apply because this was neither a trouble call nor an unplanned response to a situation, and the Scope Rule does not give the Claimant preference to this assignment, relying on Third Division Award 37907. The Carrier argues that the Claimant did not volunteer for the weekend overtime work, was unavailable at the time the assignment was initially made, and it was not obligated to change its scheduling to accommodate the few hours the Claimant ultimately made himself available for work on the claim dates.

A careful review of the record convinces the Board that the Organization has not met its burden of establishing a violation of Rule 16(A) of the Agreement in this case. By its clear language, that Rule applies to trouble calls, not scheduled overtime assignments made in response to an emergency situation. See Third Division Award 37907. The undisputed facts reveal that the Claimant was not available due to Hours of Service restrictions at the time volunteers were sought and the weekend overtime schedule was made. The Carrier has the right to deal with a planned emergency situation by constructing a schedule immediately prior to the

date of the work to assure that volunteers will be available and able to meet the work requirements. The Claimant's actions in checking himself out for extended periods on December 15 and 16, 2007, (some of which coincide with the scheduled work) and his failure to timely make known his desire to volunteer for weekend overtime work, undermine the contention that he was available to perform the disputed assignments. No violation of the cited provision has been proven.

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 11th day of January 2011.