

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40850
Docket No. SG-40999
11-3-NRAB-00003-090332**

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

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(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 M. J. Hymel Jr., for 14.5 hours at his overtime rate of pay; M. A. Parsons and G. A. Thomas, for three and one-half hours each at their overtime rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 1, and Letter of Understanding dated April 27, 2000, when it failed to call the Claimants for planned overtime work involving a signal cutover in the Houston Terminal on January 7, 2008, and instead called junior employees causing the Claimants a lost work opportunity. Carrier’s File No. 1498382. General Chairman’s File No. S-16 (A)-926. BRS File Case No. 14157-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 Carrier's failure to assign planned overtime work during a "color light cutover" at the Houston terminal to the Claimants, who were senior in class to the employees used for the overtime in issue. In support of the claim the Organization relies upon Rule 1 (F) Signal Inspector, as well as a Letter of Understanding sent by Vice General Chairman Doucet to General Chairman McArthur setting forth matters discussed and agreed upon in a meeting with Carrier representatives on April 27, 2000, concerning issues including that seniority would prevail with respect to overtime calls in the Houston Terminal. It has not been refuted that the employees given this overtime assignment were working on this project during their regularly scheduled hours.

The Organization argues that the Letter of Understanding agreed to on April 27, 2000, sets forth the agreement of the local parties that the senior man would be called for overtime in the Houston Terminal regardless of prior rights, and that not calling the Claimants for this overtime opportunity violates such agreement and the consistent practice of the parties, which exhibits their intent and must be enforced, relying on Third Division Awards 13229, 28214 and 31424. It points to the fact that seniority has consistently been a paramount consideration when determining preference to overtime work, citing Third Division Awards 19758, 29536 and 33909 and asserts that the Carrier failed to show any overriding reason why seniority could not have been considered in making the overtime assignment at issue.

The Carrier contends that the Organization failed to meet its burden of citing or proving a credible Rule that has been violated in this case. It first notes that the Organization failed to show how Rule 1 applied to all of the Claimants. Second, it asserts that the work performed by one of the employees involved the duties of a Conductor Pilot, which is outside the Organization's Scope Rule. Third, the Carrier alleges that there was no signed or written Agreement resulting from the April 27, 2000, meeting, and no member of Labor Relations was present or consented to the discussion. It points out that the letter in evidence is between two Organization representatives, and does not deal with the situation present in this case, which

involves overtime continuous with an assignment. The Carrier argues that the three individuals assigned to this overtime were performing work on the project during their regular schedule, and were therefore entitled to continue working the overtime involved that was continuous with their assignment. It asserts that the Organization has not shown why the Claimants have any entitlement to this planned overtime, citing Third Division Awards 25210, 26033, 27851, 27895, 31664 and 33895.

A careful review of the record convinces the Board that the Organization has not met its burden of proving a violation of the Agreement in this case. Neither Rule 1 nor the April 27, 2000, Letter of Understanding (even if it were found to be binding) establish the Claimants' entitlement to this planned overtime work which was part of a project which the employees used worked during their regular assignment and which was continuous with it. Stating that the Claimants were each senior to one of the employees assigned is insufficient to establish their preference to this overtime work. Additionally, even considering the "Letter of Understanding" and its expressed preference for making overtime calls on the basis of seniority, the Organization has not shown that this "practice" has been applicable to planned overtime which is continuous with an employee's regular project assignment. The Board is unable to find a sufficient evidentiary basis to support the claim.

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.