

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40980
Docket No. SG-41062
11-3-NRAB-00003-090419**

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 the senior signal employee available to fill the vacancy as described in paragraph D, items 1, 2, and 3, for eight hours at the time and one half rate of pay for each day starting on November 16, 2007, and continuing until this dispute is resolved, account Carrier violated the current Signalmen’s Agreement, particularly the Overtime Call List Agreement, dated September 12, 1993, and the Amtrak Assistant Signal Foreman Agreement, dated August 8, 1980, as amended, when it used an employee in a Signalman’s position to fill the 3rd Trick Trouble Desk position instead of an Assistant Foreman, as required by the Agreement. Carrier’s File No. BRS(N)-SD-1111. BRS File Case No. 14190-NRPC(N).”

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.

There is no dispute regarding the facts. The Carrier had contractual provisions under Appendix B-5, IV (Trouble Desk) to handle overtime on the Trouble Desk in a specific manner identified in Paragraphs A, B, C, and D of that Agreement. Such overtime accrued to the preceding trick, succeeding trick, Assistant Foreman, relief day in seniority order and then under D (1-3) other qualified Trouble Desk employees. Further, under the August 8, 1980, Memorandum of Agreement applicable to the Trouble Desk, "positions presently assigned . . . will be classified as Assistant Foreman. . . ."

The Carrier properly advertised Assistant Foreman and Assistant Foreman-Relief positions on the third trick Trouble Desk at the Boston South Station CETC in compliance with the Agreement. It continued to receive no bids from qualified employees. The Carrier thereafter advertised two Signelman positions to work the Trouble Desk.

The substance of the instant claim, as argued by the Organization, is that the Carrier created an "unqualified trouble desk position" which was not properly classified as an Assistant Foreman. Permitting a Signelman to perform in the open third trick position was a clear violation. As stated, "the Carrier failed to approach the Organization in earnest and discuss any measure that would protect the operation. . . ." The Organization argues that the position occupied by Signelman J. Alves was an Assistant Foreman - Trouble Desk position (August 8, 1980, Memorandum) and by Agreement could only have been filled if vacant by negotiated procedures contained within Appendix B-5, IV.

The Carrier raised procedural issues. It argues that the claim is duplicative of and identical to others raised in Third Division Awards 40976 and 40977 (Claimants M. M. Godek and A. January, respectively). It also argues that the Claimants or dates have not been identified to which a failure to call overtime is alleged.

On the merits, the Carrier argues that it has the right to blank the third trick Assistant Foreman - Trouble Desk assignment. No overtime therefore existed. Because there is no Agreement requiring the Carrier to work the third trick Assistant Foreman position on the Trouble Desk and because Signelman Alves neither worked that position, nor performed work accruing to that position, no violation occurred (Third Division Award 28531).

The Board carefully studied the record evidence. First, this is not a duplicative claim as those identified by the Carrier. This claim involves different Rules. Second, the failure to identify a specific named Claimant and date under these facts is not fatal.

The Rule contested is the Overtime Rule, which specifies an order for calling employees to perform overtime service in this continuing claim.

On the merits, the Agreement specifies that the C&S Trouble Desk will be occupied by an Assistant Foreman Trouble Desk. The use of a Signalman for this position constitutes a violation. While the Board appreciates the Carrier's dilemma, the manner in which the assignment was made is not in compliance with the Agreement. The argument from the Carrier that it must accept Signalmen trained to minimal performance, which it will abolish when qualified applicants for the Assistant Foreman position are obtained, does not comply with negotiated Agreements.

The Board is compelled to find a violation and remand this claim to the parties to determine the identity of those employees who lost work opportunities. Nevertheless, and without rebuttal, the Carrier argued that on this property, the appropriate payment for lost work opportunities is at the straight time rate. Accordingly, the Board will not award compensation at the time and one-half rate of pay.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 18th day of May 2011.

**CARRIER MEMBERS' DISSENT
TO
THIRD DIVISION AWARDS 40976 THRU 40980
DOCKET NOS. SG-41058, SG-41059, SG-41060, SG-41061, SG-41062**

(Referee Marty E. Zusman)

These Awards involve a series of five claims regarding the Carrier's non-stop efforts to fill Assistant Signal Foremen and Assistant Signal Foremen-Relief positions on the Trouble Desk at the Boston South Station CETC commencing in October 2007.

It is undisputed in the record that in spite of the fact that the Carrier continuously advertised Assistant Signal Foreman vacancies on the Trouble Desk, BRS-represented employees refused to bid for the "relief" or third shift positions. Some employees even forfeited their seniority in the Assistant Signal Foreman class rather than accept force assignment to the vacancies. In order to meet its operational needs, the Carrier was compelled to establish Signalmen positions in an effort to provide some level of administrative clerical support for the Train Control Center. Nevertheless, the Carrier continued to advertise the vacant Assistant Signal Foreman positions.

In these Awards, the Majority improperly ruled that the Carrier (1) violated the Trouble Desk Agreement, in spite of the fact that it maintained the Assistant Signal Foreman positions on the Trouble Desk and continued its fruitless efforts to fill those positions (2) violated the overtime call out procedures even though no one was called out on overtime and (3) violated the Agreement when it refused to pay the incumbents of the Signalmen positions at the higher rated Assistant Signal Foreman rate of pay even though they never performed work exclusively reserved to the Assistant Signal Foreman class. To add insult to injury, the Majority failed to take into account and give the Carrier credit for its unrelentless efforts to find an alternative solution to the parties' dilemma. To say that these decisions are not based on existing Agreement provisions or established arbitral precedent is an understatement.

First, nothing in the Trouble Desk Agreement, or in the basic Rules Agreement, prohibits the Carrier from establishing positions, other than Assistant Signal Foreman positions, to provide administrative clerical support, as was done in these cases. Both parties to these disputes recognized that the Assistant Signal Foreman positions responsible for the Trouble Desk were never abolished and the Carrier relentlessly continued its fruitless efforts to fill those positions consistent with the provisions of the parties' Agreement. It should go without saying that the parties' Agreement contains not only mutual rights, but also obligations on behalf of both parties, including BRS-represented employees, to fill advertised positions.

**CARRIER MEMBERS' DISSENT TO AWARD 40976, ET AL
DOCKET NOS. SG-41058, ET AL
Page 2**

Second, it is well established in this industry that overtime call procedures only apply when employees are called out for overtime. Here, no overtime was offered or worked. Third Division Awards 37828, 31724 and 30525 are but a few examples of this principle. Accordingly, there was absolutely no basis on which to rule that the call out procedures were triggered or violated.

Finally, it is equally well established in this industry that in order to qualify for a higher rate of pay, Claimants must "substantially" fulfill the responsibilities of the higher rated position. Simply because the Signalmen at the Train Control Center answered phones, relayed information and performed related clerical administrative functions, does not constitute "substantial" fulfillment of Assistant Signal Foreman functions as historically defined on this Carrier's property. Stated differently, although Trouble Desk Assistant Signal Foremen perform some administrative clerical functions, as do virtually every position throughout the Carrier's property, those administrative clerical tasks do not constitute "Assistant Signal Foreman" work, as historically defined by the parties. In fact, Third Division Award 28581, which was not only referenced in these decisions but, more importantly, denied a 1987 Trouble Desk claim between these same parties, recognized that (1) administrative clerical functions are not the exclusive responsibility of Trouble Desk Assistant Signal Foremen (2) Trouble Desk Assistant Signal Foremen did not have a demand right to be called in on overtime to perform those functions, and (3) they can be performed by others, including employees outside the craft or class. The instant Awards rendered by the Majority clearly suggest that the latter approach would have been the more appropriate action herein, as well.

These Awards are not only illogical and palpably erroneous, they represent an unwarranted windfall for employees who consciously chose not to fill Assistant Signal Foreman positions when offered to them.

We vigorously dissent to these decisions.

Richard F. Palmer
Carrier Member

Michael C. Lornik
Carrier Member

May 18, 2011