

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41199
Docket No. SG-40818
12-3-NRAB-00003-090102**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Northeast Illinois Regional Commuter Railroad
(Corporation (Metra)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Rail Corp.:

Claim on behalf of D. R. Shreffler and R. W. Sorensen, for 26 hours overtime to each Claimant, account Carrier violated the current Signalmen’s Agreement, particularly Rules 1 and 15 and Side Letter No. 10 (dated May 16, 1999), when it used junior employees instead of the Claimants for overtime service on July 14 and 15, 2007, and denied the Claimants the opportunity to perform this work. Carrier’s File No. 11-21-635. General Chairman’s File No. 13-RI-07. BRS File Case No. 14176-NIRC.”

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.

Initially, the Board must deal with a procedural matter concerning the number of Claimants involved in this matter. The initial claim filed by the Organization with the Carrier on September 7, 2007, named two Claimants – R. W. Sorensen and R. Ballard. By letter dated September 12, 2007, the Organization submitted another claim letter to the Carrier stating that “[t]he file omitted one of the claimants, D. Shreffler . . . [a]ttached is a corrected version.” In the November 6, 2008, filing of its Notice of Intent with the Board, the Organization only named two Claimants – Shreffler and Sorensen. Although mentioned by the Organization in its Submission at Page 3 (“[t]he Claimants in this case are D. Shreffler, R. W. Sorensen, and R. Ballard”) Ballard was omitted from the November 6, 2008, Notice of Intent filed with the Board. Ballard was also omitted in the recitation of the Statement of Claim in the Organization’s Submission at Page 1. The Carrier raises the omission of a Claimant in its Submission at Page 18, but (we believe mistakenly) refers to that Claimant as Shreffler (“The Carrier also notes that no mention was made in the November 6, 2008 letter regarding any claim on behalf of claimant D. Shreffler . . . and [a]lthough the Organization argued on the property that Claimant Shreffler was entitled to 26 hours for the work performed by the [Signal Electronic Technicians] SET’s, this portion of the claim has been dropped by the Organization as it was not included in the statement of claim to the National Railroad Adjustment Board . . . [C]laimant Shreffler is not entitled to any remedy if this claim were to be sustained.”).

The Board is bound by the Organization’s official Notice of Intent of November 6, 2008, filed with the Board which identified only two Claimants. Thus, the only Claimants in this matter can be those specifically named by the Organization in its official Notice of Intent filed with the Board – i.e., Shreffler and Sorensen.

The Claimants are Signal Testmen headquartered at the Signal Wire Shop at Tinley Park with Monday through Friday schedules. According to the Organization’s September 11, 2007 claim, as stated in its September 11, 12, and December 19, 2007 letters, and as further stated in its Submission at Page 3, Sorensen holds prior rights on the Rock Island District. No similar assertions were made on the property or before the Board with respect to Shreffler.

On Saturday and Sunday, July 14 and 15, 2007, the Carrier assigned overtime to Signal Testmen and Signal Electronic Technicians to perform testing of new signal equipment at new signal locations from 16th Street Interlocking to CP 46th Street on the Rock Island District (four new locations and nine existing locations). The Carrier utilized four Testmen and three Signal Electronic Technicians, with the Testmen assigned to do all FRA testing associated with the electronic equipment. The three Signal Electronic Technicians were used to set up all of the electronic equipment and assist the Testmen with any electronic equipment issues. The Signal Electronic Technicians who received the overtime were junior to the Claimants. According to the Carrier, during the week preceding the weekend overtime assignments, the employees who were assigned the overtime performed work related to the project, while the Claimants did not. This claim followed.

In Third Division Award 41188 the Board held that Side Letter No. 10 and Public Law Board No. 5565, Award 34 required that for employees stationed on their prior rights district, “[p]rior rights takes priority in the exercise of seniority, overtime allocation. . . .” That same rationale governs this matter. An employee with prior rights on the Rock Island District and stationed on that district is entitled to overtime opportunities on that district based on seniority gained through prior rights.

However, according to the Organization’s September 11, 12, and December 19, 2007, letters as well as in its Submission at Page 3, only Sorensen held prior rights on the Rock Island District. There is no showing that Sorensen was unqualified to perform the work. Therefore, Sorensen was entitled to the overtime opportunities based on his prior rights on the Rock Island District.

There is no similar assertion in the record developed on the property or asserted before the Board for Shreffler as a prior rights employee on the Rock Island District. Notwithstanding Shreffler’s otherwise greater seniority, we find no violation of the relevant Rules for the Carrier’s decision to not assign the overtime opportunities to Shreffler who was not associated with the work during the period preceding the overtime assignment.

In terms of a remedy, Sorensen shall be made whole for any lost overtime opportunities on the dates set forth in the claim. However, if Sorensen earned overtime on those dates, those amounts shall be offset against the Carrier’s liability.

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 22nd day of February 2012.