

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41204
Docket No. SG-40869
12-3-NRAB-00003-090192

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. (METRA):

Claim on behalf of C. J. Fatora and T. H. Stone, for 48 hours overtime each account Carrier violated the current Signalmen’s Agreement, particularly Rule 15 and Side Letter 10 (dated May 16, 1999), when it used junior employees instead of the Claimants for overtime service on October 1, 2, 3, 4 and 5, 2007 and denied the Claimants the opportunity to perform this work. Carrier’s File No. 11-21-639. General Chairman’s File No. 15-MW-07. BRS File Case No. 14193-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.

The Claimants are Signal Testmen on the Milwaukee District with Monday through Friday schedules. The Claimants also hold prior rights on the Milwaukee District. Junior employees involved in this dispute held the same schedule and hours as the Claimants on the Milwaukee District.

On the dates in dispute and as part of their regular assignments, junior employees were rested during their regular hours and assigned to work performing testing at Tower A-2 beginning at 6:00 P.M., which resulted in overtime for those employees. The Carrier changed the junior employees' scheduled work hours during the week in question because of the high volume of traffic at that location during the day and so as to allow the employees a long enough window to perform the necessary testing. The Claimants worked their regular assignments during the days in dispute, which were not in any way connected to the testing assignments performed by the junior employees.

Third Division Award 41203 applies to this dispute:

"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. . . .' In Awards following that reasoning, the Board upheld claims on behalf of employees who were stationed on their prior rights district and whose prior righted seniority entitled them to perform overtime on days they were not scheduled to work and where junior employees performed overtime on the senior employees' prior righted district.

But that is not this case.

Here, the junior employees – with the same schedules as the Claimants – performed their regularly scheduled work and did so on the days in dispute when the Claimants also performed work. . . . [T]here is no Rule support for the Claimants to use prior rights seniority to claim overtime performed by junior employees as an extension of the junior employees' normally scheduled work on the same workday when the Claimants also performed work on the same normally scheduled work

days. Under these facts, the Board agrees with the Carrier's statement . . . that '[t]he work was correctly allocated to the employees who performed this work during their scheduled work hours. . . .'

For the same reasons, this claim lacks merit.

The Organization's assertion that the work assigned to the junior employees was "new work" allowing the senior Claimants to perform the work is not persuasive. The record shows that the junior employees' assignment was to perform FRA testing and, during the workweek prior to the claim, the junior employees also performed FRA testing at the A-2 location during their regularly scheduled hours (as they did at other locations on the Carrier's system at other times). As the Carrier asserts in its January 10, 2008 letter, no Rule requires the Carrier to swap out a junior employee for a senior employee when overtime becomes available as part of the junior employee's regularly scheduled assignment (here to perform FRA testing) during the regular workweek. As the Carrier points out, the Claimants could have bid these positions had they desired to perform this work. Accordingly, the claim is denied.

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 22nd day of February 2012.