

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41622
Docket No. SG-41531
13-3-NRAB-00003-100321

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
(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 E. M. Sanders, for 51.5 hours at his overtime rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 1L, 16, 40 and 80, when on March 21, 22, 23, 25, 26, 27, 28, 29, 30 and 31, 2009, it called a junior employee (Relief Signal Maintainer) instead of the Claimant to perform work on his assigned territory between milepost 790.0 to 819.0 on the Salt Lake Subdivision. Carrier’s File No. 1519517. General Chairman’s File No. UPGCW-16-1629. BRS File Case No. 14384-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.

The Organization raised procedural and merits issues with the dispute at bar. On procedure it has brought to the Board the allegation that the Carrier failed to timely respond. On merits the Organization argues that a junior employee was called to perform work on the Claimant's assigned territory. The Organization argues that when the Carrier assigned Relief Signal Maintainer Stark to (1) follow the System Gang (2) perform overtime and (3) to work that overtime on the Claimant's territory in supporting, removing and repairing signal equipment, it violated Agreement Rule 1 (Seniority Class 1) Part 'L' (Relief Signal Maintainer) Rule 16 (Subject to Call) Rule 40 (Seniority) and Rule 80 (Loss of Earnings). The Claimant was (1) available (2) the senior employee (3) informed Manager Black that he wanted to perform the work on his territory of providing support for the tie gang before the work began and (4) was denied the overtime work on his assigned territory in violation of the Agreement.

The Carrier denied all elements of the claim. It argued a lack of merit in that the Claimant was assigned to Gang No. 6414. Stark was assigned to Gang No. 8353. The work performed by Stark did not belong to the Claimant because it was the regularly assigned duties of Relief Signal Maintainer Stark on all claim dates. The Carrier contended that the Claimant was properly assigned and performing his own work without entitlement to select other work or to the compensation claimed. In fact, the Claimant had no right to the work by virtue of seniority, territory or assignment. The Claimant was working his own position. Stark was properly assigned and was regularly assigned to perform the disputed work and the associated overtime.

The Board studied the full record carefully. There are no procedural errors. On merits, the Carrier put forth evidence of record documenting with the statement of Manger Black that Relief Signal Maintainer Stark was assigned the work in dispute and that the Claimant had no seniority right to the assignment or the overtime associated with the work. Further, the Carrier supplied the Labor Distribution Reports for both gangs and their locations. Nothing in the record rebutted any of this evidence.

The Organization provided no evidence of record to overcome the Carrier's facts. There is no record documenting that any employee was called under Rule 16 or that the Claimant should have been "called" to perform this work. The Statements of record document that the Claimant was not the regular employee; Stark was on his regular assignment and all of the work involved Stark's regular assignment. No "calls" were made or documentation submitted to invoke Rule 16.

The Organization has the burden to prove that the Carrier violated the Agreement in the assignment of the disputed work. The Board finds no evidence to support a violation in this record or a loss of earnings. Therefore, the claim must be 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 24th day of April 2013.