

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41634
Docket No. SG-41774
13-3-NRAB-00003-110382

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 M. G. Bolten, for four hours at his overtime rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 16, when, on May 11, 2010, it utilized another employee to perform overtime service on the Claimant’s assigned territory thereby causing the Claimant a lost work opportunity. Carrier’s File No. 1537997. General Chairman’s File No. S-16-1077. BRS File Case No. 14614-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 instant dispute involves the Carrier's use of a junior employee to perform testing on the Claimant's territory. The Organization argues that the overtime work performed by the Relief Signal Maintainer violated the Agreement, because it was performed on territory "owned" by the Claimant as Regular Assigned Maintainer. The Organization directs the Board's attention to the following provision of the Agreement as allegedly violated by the Carrier.

"Rule 16 – Subject to Call

- A. Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and will notify the person designated by the Management of their regular point of call. When such employees desire to leave such point of call for a period of time in excess of two (2) hours, they will notify the person designated by the management that they will be absent, about when they will return, and, when possible, where they may be found. Unless registered absent, the regular assignee will be called, except when unavailable due to rest requirements under the Hours of Service Act, as amended by Public Law 94-348.

NOTE 2: The Local Chairmen and Local Management may agree to establish lists or other means in which to determine which employees are to be called under this rule, subject to review by the General Chairman and Labor Relations."

The Organization argues that the Claimant was not registered absent and was the regular assignee to be called. He was not called even though the work performed was on his assigned maintenance territory. The Claimant was available, subject to call and the overall facts document that he was run around. On the Claimant's territory, after the completion of his work, a junior employee was permitted to work at Mile Post 83.30 and 83.40 on the Smithville Subdivision from 4:00 P.M. to 8:00 P.M. on May 11, 2010 at the overtime rate of pay. The Claimant was not called out to perform the overtime service, although the work of testing was work that he was capable of performing and was done on his own territory. Important to this dispute, the work

started and stopped at several locations at which the Claimant worked prior and subsequent to this dispute. Significantly, the Organization asserts without rebuttal from the Carrier that the Electronic Technician (ET) had been instructed by Manager Buus to call the owning Signal Maintainer to perform the work. Buus told the Claimant, "write the claim and I will pay it" and told the Organization that, "He would have paid the claim and had told the ET to work with the owning maintainers."

The Carrier denied the claim at bar primarily on one point. It argues throughout (without addressing a number of other issues) that Rule 16 is inapplicable to the claim. The Carrier makes numerous arguments based primarily on the basis that the Relief Signal Maintainer continued his straight time assignment when his normal hours ended working with testing. This is what he had been assigned to do and he continued to do it on overtime. Rule 16 does not apply because there was no "call" and there was no "emergency" which would make the Rule applicable. The Carrier produced and the Organization denied receipt of applicable trouble tickets for the date of claim.

The Board is required to apply the language negotiated by the parties to an Agreement. It must be applied as written. It stands as fact that Buus would have paid the claim. It stands as fact that there was no "call" and no "emergency." The Claimant spent his work day performing maintenance. The junior employee performed testing with the ET. The Carrier argued that the junior employee simply continued the work that he had been performing. The Rule as written is titled, "Subject to Call." A reading of the Rule refers to "emergencies in the operation of the railroad." The facts at bar are unpersuasive to document the applicability of the Rule as written.

Under the existing facts, there is no proof that a "call" was made; a call that the Carrier argues was not made. The Carrier's arguments that the junior employee's "duties were not complete at the end of his straight-time hours, therefore, he continued performance of those duties into overtime" holds. The Organization failed to prove that the Claimant should have been called under the provisions of the Agreement; that the Rule relied on as having been violated, was violated; or that the "call" or "emergency" existed to make Rule 16 applicable. Given the language of the Rule and the facts at bar, the Organization's burden has not been met. Accordingly, the claim must be denied.

Form 1
Page 4

Award No. 41634
Docket No. SG-41774
13-3-NRAB-00003-110382

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.