Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 41822
Docket No. SG-41165
14-3-NRAB-00003-100005

The Third Division consisted of the regular members and in addition Referee Michael Capone 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 Railroad Corp. (Metra):

Claim on behalf of A. B. Bakotic, for 24 hours overtime pay, account Carrier violated the current Signalmen's Agreement, particularly Rule 15, when it used a junior employee instead of the Claimant for overtime service on May 17 and 18, 2008, and denied the Claimant the opportunity to perform this work. Carrier's File No. 11-21-690. General Chairman's File No. 15-RI-08. BRS File Case No. 14321-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.

On July 15, 2008, the Organization filed this claim asserting that the Carrier violated Rule 15 of the Agreement when it assigned Signal Electronic Technician (SET) P. Gross, who was junior to the Claimant in seniority, to overtime on the Rock Island District on May 17 and 18, 2008. The Claimant is also a SET on the Rock Island District, and is headquartered at the Tinley Park Wire Shop.

In a letter dated August 22, 2008, the Carrier denied the claim asserting that on the dates in question, junior employee Gross was "assigned the duties of cleaning the RFL equipment at Polk Street and Taylor Street plants." The Carrier stated that these are Gross's regular duties during the workweek, which were not completed "due to heavy train moves." Consequently, he was required to complete those duties on the weekend.

The Organization argues that the work performed by the junior employee on overtime was "miscellaneous" and not connected to his regular duties. Therefore, stresses the Organization, the Claimant was entitled to perform those functions based on his senior position in the same classification as a SET. The Organization asserts, most strenuously, that the junior employee is not a member of a gang or signal shop and, therefore, was not covered by the section of Rule 15 cited by the Carrier. Instead, the Organization contends that the unambiguous language used in Rule 15 clearly entitles the Claimant to the overtime at issue.

The Organization maintains that absent express language that would entitle the junior employee to overtime instead of the Claimant, seniority should apply when assigning such work. The Organization cites Third Division Awards 30833 and 33909 in support of its contention that standards of seniority apply when assigning overtime. The Organization also points to a document that it contends was issued by the Labor Relations Department, which describes different overtime scenarios, one of which is similar in nature to the dispute here and specifically states that "the general rule of seniority for overtime applies."

Conversely, the Carrier contends that it assigned the overtime in question to the junior employee in accordance with Rule 15 and that the Organization failed to prove that the Claimant was entitled to the work. The Carrier further contends that the work was "planned overtime" assigned to the junior employee and his co-worker. It asserts that the work could not be completed during their regular work

hours because they were assigned to other functions. As such, argues the Carrier, the overtime assignment did not constitute "miscellaneous technician's work" accruing to the Claimant. The also Carrier argues that it is not obligated by the parties' Agreement to "swap out" a junior employee who is the incumbent of a group of employees that routinely performs maintenance tasks and that junior employee Gross and his co-worker (Price) are a "group of employees who customarily work together" as defined by Rule 15. The Carrier also argued that it is undisputed that the Claimant, who is also a SET, is regularly assigned to work with another employee and has no involvement with the work claimed.

The Carrier also contends that the document issued by the Labor Relations Department and upon which the Organization relies is not part of the parties' Agreement and, therefore, has no application in this dispute, nor does it constitute evidence that seniority for assigning overtime is required. The Carrier asserts that an employee who regularly performs a certain type of work during the workweek has a "first right" to complete the task on overtime, regardless of seniority, if it is necessary for the work to be completed. The Carrier relies on Third Division Awards 41204, 39491, 28490, 27851 and 5346, as well as Public Law Board No. 4716, Award 44 to support its contention that the junior employee in the instant case had "first right" to the overtime.

The relevant contract language applicable to the dispute is as follows:

Rule 15, in pertinent part, reads:

> "When overtime is required of a part of a group of employees who customarily work together, the senior qualified available employees of the class involved shall have preference to such overtime if they so desire.
>
> EXAMPLE: Gang 1 has fifteen men in it. Five are engaged, for instance, in tying in line wire. If overtime on such work is necessary, say, of two employees, the senior of the five (group) if qualified and available, will be given preference. If the entire five men are needed, the five will work the

> overtime regardless of seniority in the gang of fifteen as a whole. When there is planned overtime work or service to be performed on rest days, the senior man of the class involved will be given preference to perform such overtime service. This rule and example apply to gang and signal shop."

The Board finds that the Organization failed to submit substantial evidence to prove that the Carrier violated Rule 15 as claimed. The Claimant is assigned to the Tinley Park Wire Shop. Even though the shop is located on the very same Rock Island Engineering District as junior employee Gross, there is nothing in the record to establish that the Claimant and Gross are part of the same "group of employees who customarily work together," as required by Rule 15, for the senior employee to have a claim to the overtime involved here. Rule 15 explicitly states, "This rule and example apply to gang and signal shop." The record provides no evidence that the junior employee and the overtime that he performed on the dates in question was work that emanated from the Tinley Park Wire Shop.

At this juncture, the Board finds it necessary to also state that we reject the Carrier's assertion that Rule 15 obligates it to give the overtime to the junior employee. There is nothing in the record that indicates that the junior employee was a member of a "gang or signal shop" that could be considered a group of employees who customarily work together as provided for by the Rule. Instead, the Board finds that previous precedent established by the Board applies to the facts in this case record.

The Board has previously held, with the same parties here, that seniority alone is not enough to secure overtime. The Board has found that assigning overtime to a junior employee for work regularly performed, but not completed during the normal workweek by the employee, does not constitute a violation of the parties' Agreement. In Award 41204, the Board found that the Claimants, who worked their regular assignments during the same workweek as the junior employees, as is the case here, but did not perform work connected to the work of the junior employees, were not entitled to the overtime. Further, in Award 39491,

also pertaining to a dispute between these same parties, the Board held, in pertinent part, as follows:

> ". . . the Carrier asserts that the '. . . [C]laimant is not a member of a group of employees who customarily work together.' That assertion was not refuted on the property. Rule 15 therefore does not give the Claimant assignment rights for the disputed overtime work.
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> Throughout, the Carrier asserted that it deemed the workforce selected was sufficient and qualified to perform the work. The Organization failed to prove that determination violated any specific Rule of the Agreement. But in order to prevail, that is what the Organization must prove."

In Award 5346, the Board held

> ". . . it is well settled by awards of this Board that even though there are no specific rules in the Agreement covering the situation, seniority is the essence of the Collective Agreement and that it applies in determining preference to overtime work of a given class . . . . It is also a well-established principle that overtime work arising out of a particular position belongs to the occupant of that position. The two principles are not in conflict. The first is merely qualified to that extent by the second."

Similarly, in Award 27851, the Board also found, as we have here, that while the junior employee was not covered by contract language identical to Rule 15, ". . . the Carrier was not in violation of the Agreement by assigning overtime to a junior employee if such flowed from his specific assignment."

In support of its affirmative defense the Carrier introduced into the record correspondence and work records indicating that the junior employee's overtime assignment "flowed from his specific assignment." There is nothing in the record that refutes or challenges those documents. The Organization, in a valiant attempt to rebut the documentary evidence, argued before the Board that the overtime assignments referenced on the Carrier's work records are not the regular

assignments of the junior employee. However, the record does not contain any evidence presented by the Organization that contradicts the Carrier's work records. The Board, as well as many other Section 3 tribunals, has previously held that mere assertions are not enough. Reliable and substantial evidence must be presented to meet the applicable burden of proof.

The only issue raised by the Organization in the record is where it alleged that the junior employee performed "troubleshooting" during the overtime assignment - implying that it was not work that he routinely performed - and that the work was "miscellaneous" and, therefore, should have been made available to the Claimant. However, there is nothing in the record that supports either of those allegations. The work records do not indicate that the junior employee performed any "troubleshooting." Nor is there support for the Organization's contention that the overtime work was "miscellaneous technician's work" that should have been made available to the Claimant. The Board failed to find a definition or explanation in the record as to what constitutes "miscellaneous" work.

The Board carefully reviewed the numerous Awards presented by the Organization and finds that while we agree with the principle that seniority plays a role in allocating overtime unless restricted by the Agreement, the cases cited are distinguishable from the facts in the instant case. The findings in those Awards involved emergencies, overtime in different territories, and employees covered under separate agreements. We also find that the Board in Third Division Award 30833, while concluding that seniority should have been used to assign overtime outside of the Claimant's territory, also stated that " . . . absent any other overriding reason for not considering seniority and absent any question of relative ability or other work demands, the senior employee was entitled to the overtime . . . ." In the instant case, the Board finds that the overtime afforded to the junior employee - to complete his regular maintenance function not completed during the regular workweek – because of "other work demands" constitutes sufficient "overriding reason for not considering seniority." The principle established by the cases relied upon by the Organization – that seniority is a basic cornerstone of collective bargaining and applies to overtime – has a broad and nonexclusive effect in the absence of specific contract language or an established past practice. The Board finds that the cases cited above, particularly Awards 41204, 39491, 27851 and 5346,

provide more relevant guidance given the similar circumstances found in those cases and the facts in dispute in the instant case.

Based on the foregoing, the Board finds that the case record now before the Board lacks the requisite substantial evidence that the Carrier violated Rule 15 of the parties' Agreement. Accordingly, 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 20th day of March 2014.