

Award No. 11020

Docket No. SG-10525

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roy R. Ray, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(CHESAPEAKE DISTRICT)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen of America on the Chesapeake and Ohio Railway (Chesapeake District) that:

(a) The Carrier violated the Signalmen's Agreement when it assigned junior Signalman K. W. Brown to overtime service at RJ Cabin, Russell, Kentucky, on May 23, 1957, instead of senior Signalman O. L. Adkins, since both Signalmen were members of this Carrier's Russell Division Signal Gang, under Signal Foreman R. L. Purcell.

(b) The Carrier now compensate senior Signalman O. L. Adkins for eight (8) hours at his respective overtime rate of pay, the number of hours and rate received by junior Signalman K. W. Brown, on May 23, 1957. [Carrier's File No. SG-116]

EMPLOYEES' STATEMENT OF FACTS: On the date of the instant claim, the claimant, O. L. Adkins, was regularly assigned as Signalman in this Carrier's Russell Division Signal Gang, under Signal Foreman R. L. Purcell. Claimant Adkins held a seniority date in the Signal Helper's class as of 6-10-1944, and was ranked in that class as No. 17. The claimant held a seniority date in the Signalman-Signal Maintainer class as of 1-11-1954 and was ranked in that class as No. 15.

The junior Signalman, K. W. Brown, who was used to perform the overtime work embraced in this claim, held seniority in the Signal Helper's class as of 5-28-1956, and was ranked in that class as No. 25. Signalman Brown held a seniority date in the Signalman-Signal Maintainer class as of 5-26-1956 and was ranked in that class as No. 16.

Prior to and on May 23, 1957, the Russell Division Signal Gang, to which Signalmen Adkins and Brown were regularly assigned, was engaged in the installation of new signal apparatus and changing of present signal facilities in connection with the new passenger main track as well as certain changes in the signal apparatus and facilities west of RJ Cabin. Both Signalmen were working with and as a part of the Signal

CONCLUSIONS

There has been no violation of the agreement rules, and the claim should be denied in its entirety.

All data contained in this submission have been discussed in conference or by correspondence with the Employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim arises out of use by Carrier of a junior employe on overtime. Claimant and K. W. Brown were regularly assigned to Carrier's Division signal gang at Russell, Kentucky. Claimant was senior to Brown. On the claim date the gang was engaged in installing new signal apparatus and changing existing signal facilities in connection with the new passenger track at Russell. Part of the work was inside RJ Cabin, an interlocking station at Russell, and included the making of cut-ins and hook-ups of electrical circuits and "checking out" the new apparatus installed. Brown worked inside RJ Cabin on this new installation on the day shift under the supervision of Signal Inspector Armour. The record does not show what type of work Claimant performed that day or where he worked but presumably he was with the part of the gang which worked in and around Russell. Overtime work was necessitated in order to have a qualified employe on duty during the night inside RJ Cabin to see that the Telegraphers understood the new signal units and to make adjustments, if necessary, to keep the equipment operating. On the first overtime hitch (3 P. M. to 11 P. M.) another signal maintainer, Garvin, who had worked inside RJ Cabin on his regular shift, was used. On the 11 P. M. to 7 A. M. shift Brown was used instead of Claimant.

Petitioner contends that Carrier's action in using Brown violated Claimant's seniority rights. It says that since Claimant was a qualified signalman (admitted by Carrier) he was per se qualified to handle the work in question; and that since Claimant was a member of the same signal gang and senior to Brown, he was entitled to the overtime. It relies upon Rule 33(a) which reads: "Seniority shall consist of rights based on relative length of service of employes as hereinafter provided".

Carrier does not quarrel with the proposition that seniority is important and should be safeguarded. It agrees that where two employes are equally qualified, the overtime should go to the one with the greater seniority. But in this case, it asserts that Brown was better qualified for this particular work than Claimant and that this determination was properly made by Claimant's superior. This is based on the theory that the work involved called for a familiarity with the new equipment which had been installed so that proper instructions could be given to the telegrapher-operators; and the fact that Brown had worked on the installation of this equipment during his regular daytime shift on the claim date under the immediate supervision of the Signal Inspector, whereas Claimant had worked elsewhere that day. Carrier also contends that, since the work in question was a part of the work which Brown had begun and participated in during his regular hours, he was entitled to the overtime growing out of it. It further asserts that it has been the past practice of this Carrier to use employes who have been engaged in the particular work to handle overtime arising out of that work.

There are no specific rules in the Agreement concerning allocation of overtime and in our judgment Rule 33 does not give Claimant a right to the overtime merely because he has the seniority. In order for Claimant to establish a right to the overtime, he must show that he is qualified for the work. This he has failed to do. The only evidence as to Claimant's qualifications consist of the fact that he was a member of the signal gang which made the installation; the statement of the Local Chairman that he considered Claimant qualified; and the statement of Foreman Purcell, made on November 28th, that he considered Claimant qualified. This latter statement is of little value. It was contrary to the statement Purcell had made on September 20th when he agreed with Supervisor Wilburn that Brown was better qualified. Furthermore, Purcell seems to have repudiated it at a later date. In contrast, in support of its position, Carrier offers statement of Signal Inspector Armour, who instructed the employees (including Brown) performing the work inside RJ Cabin, and that of Assistant Supervisor of Signals Wilburn to the effect that Claimant was not sufficiently qualified for the work to be left in charge of it. These opinions were based on Claimant's lack of familiarity with the installation.

The Carrier's officials made a determination that Brown was better qualified for this work than Claimant. In view of the fact that Brown had worked on this particular installation inside RJ Cabin and was familiar with the equipment while Claimant was not, we find nothing in the record to indicate that the decision of Carrier was arbitrary or unfair. Moreover, it appears to have been in accord with past practice. We conclude, therefore, that Petitioner has failed to show any violation of Claimant's seniority rights.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1963.