



Award Number 17755

Docket Number SG-18141

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Ellis, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ERIE LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie Lackawanna Railway Company that:

- (a) The Carrier violated, and continues to violate the intent and provisions of the current Signalmen's Agreement, particularly Rule 34, (preference for employment) when it allowed and continues to allow Mr. R. H. Draxler, temporary Signal Maintainer, Elmira, New York, (no Signal Maintainer seniority; Assistant Signal Maintainer seniority 10/14/63; permanent Signal Helper, Gang 51, Susquehanna Delaware Division,) to be called and be given preference to work the mornings of 5/24/67, 5/25/67, 5/26/67, 6/1/67, 6/2/67, 6/5/67, 6/6/67, 6/7/67, 6/8/67, 6/12/67, and 6/13/67, 4:50 A.M. to 7:30 A.M., and to remain on duty past regular hours one hour on 5/26/67 and 6/8/67, 4:00 P.M. to 5:00 P.M.; one hour and thirty minutes on 6/12/67, 5:30 P.M. to 7:00 P.M.; and two hours on 6/9/67, 4:00 P.M. to 6:00 P.M. to arrange signals and to fix and clear detour boards for the proper protection of track conditioning equipment C-28522, instead of calling or giving preference to Mr. D. E. Tarkett, acting Signal Maintainer Elmira, New York (permanent Assistant Signal Maintainer, Elmira, New York; no Signal Maintainers seniority; Assistant Signal Maintainer seniority 7/14/58) who is equal to Mr. R. H. Draxler in qualifications, fitness, and ability, and senior to him all classes.
- (b) The Carrier violated, and continues to violate the intent and provisions of the current Signalman's Agreement, particularly Rule 34, (Preference for employment) when it allowed and continues to allow Mr. R. H. Draxler, temporary Signal Maintainer, Elmira, New York (no Signal Maintainer seniority; Assistant Signal Maintainer seniority 10/14/63; permanent Signal Helper, Gang 51, Susquehanna Delaware Division), to be called and be given preference to work on 6/10/67, 8:00 P.M. to 10:40 P.M. to test interlocking signal apparatus at "JF", Elmira, New York; and to remain past regular hours 2 hours and 30 minutes on 6/6/67 5:00 P.M. to 7:30 P.M. to test interlocking apparatus at "HO" Tower, Horseheads, New York, instead of calling or giving preference to Mr. D. E. Tarkett, acting Signal Maintainer, Elmira, New York (permanent Assistant Signal Maintainer) Elmira, New York; no Signal Maintainer seniority;

CARRIER'S STATEMENT OF FACTS: Section No. 9 is assigned to maintain the territory between MP 270.50 to MP 286 on Carrier's Susquehanna Division. The gang assigned to this section consists of a Leading Maintainer, 2 Maintainers and an Assistant Maintainer, headquarters Elmira, N. Y. At the time of claim, the gang consisted of the following employees:

Leading Maintainer—E. L. Sensel—regular position

Maintainer—R. H. Draxler—awarded temporary vacancy March 17, 1967

Maintainer—D. E. Tarkett—Assigned to temporary vacancy May 24, 1967

Assistant Maintainer—W. H. Barnes—assigned to temporary vacancy May 24, 1967

It is accepted and recognized procedure under the rules agreement to inform the Leading Maintainer when overtime work is necessary. He in turn determines what class and how many other members of the gang are needed and then, in accordance with seniority established in the class, orders the employee of the class or classes needed to work overtime. In case there are 2 positions of the same class in the gang and neither employee working such positions has established seniority in the class, as in the instant case, the procedure followed is to use the employee for overtime work who has most recently been working the longest in the gang. Thus, R. H. Draxler was used to work overtime on the dates of claim as he was awarded a position of Maintainer on March 17, 1967, whereas, D. E. Tarkett, hereinafter referred to as claimant, was not assigned to such a position in the gang until May 24, 1967, or the first day for which claim is made.

Claim was timely instituted on behalf of claimant on June 5, 1967 alleging a violation of Rule 34 of the applicable agreement and handled on appeal. The claim was denied at all levels on the basis that neither Rule 34 nor any other rule of agreement supported same. Copies of pertinent correspondence are attached as Carrier's Exhibit A through K.

(Exhibits Not Reproduced)

OPINION OF BOARD: During the period from May 24, 1967 to June 13, 1967 the Carrier assigned one Draxler to perform maintainer's work on an overtime basis. Neither Draxler nor Claimant Tarkett held any seniority as a maintainer but Claimant Tarkett held a higher seniority ranking than Draxler in all classes where both of them held seniority. Organization claims that Carrier violated the Agreement when it used Draxler to perform the overtime to the exclusion of the Claimant.

The agreement between the parties is silent as to how overtime work will be assigned. Carrier says that its inherent power to assign overtime as it sees fit can be limited only by the express terms of the Agreement.

A well recognized majority of the cases accept this proposition. For example see Award 10924 (Hall):

"* * * One of the most basic and fundamental principles recognized by this Board is that the assignment of work is the prerogative of the Carrier unless such right has been limited by the contract. See Awards 6856, 7307, 7362 and 7849 among others."

Since Organization must show a contractual limitation upon Carriers right to assign overtime, which Organization is unable to do, we must hold in favor of the Carrier.

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

Carrier did not violate the contract.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1970.

Dissent to Award 17755, Docket SG-18141

Apparently, the author of this Award first decided that the Claim must fail and then proceeded to write something, anything, to justify his conclusion because Carrier did not contend that it had "* * * inhernt power to assign overtime as it sees fit * * *". Neither did Carrier contend that such power "* * * can be limited only by the express terms of the Agreement." Furthermore, none of the Awards relied upon have anything to do with the allocation of overtime as between employees of the same class which was the issue in this case.

Since this Award does not relate to the issue presented, it is wholly lacking in validity.

/s/ G. ORNDORFF
G. Orndorff
Labor Member

**CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S DISSENT TO
AWARD 17755, DOCKET SG-18141**

Award 17755, contrary to the statement of the Dissenter, does relate to the issue presented to the Board and properly disposes of it. The issue presented to the Board involved the assignment of overtime work as between employees of the same class in a situation where the Agreement between the parties makes no provision for the assignment of overtime work. Award 17755 correctly held that in the absence of a contractual limitation on Carrier's right to assign overtime the Carrier was free to assign the overtime to either of the employees. The Dissenter apparently seeks to ignore the fact that the Agreement contains no rule pertaining to the allocation of overtime.

/s/ G. C. WHITE
G. C. White

/s/ R. E. BLACK
R. E. Black

/s/ P. C. CARTER
P. C. Carter

/s/ W. B. JONES
W. B. Jones

/s/ G. L. NAYLOR
G. L. Naylor