

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20261  
Docket Number SG-19791

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(Kansas City Terminal Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Terminal Railway Company:

On behalf of Signalman-Maintainer E. L. Anderson for six (6) hours' pay at the rate of \$6.00 per hour account junior man used to perform overtime from 3:00 P.M. to 9:00 P.M. on December 1, 1970.

/Carrier's File: SG-7.71.140/

OPINION OF BOARD: Claimant E. L. Anderson and fellow worker R. L. Kerr are employees of Carrier in the signalmen class. Claimant Anderson is senior in service to Signalman Kerr. On December 1, 1970 Anderson and Kerr were working regularly assigned hours in the same signal construction gang under the supervision of the same foreman. On that day, Claimant Anderson was released from service at 3:00 P.M., the end of the regular assigned work period. Mr. Kerr was held over from 3:00 P.M. to 9:00 P.M. to flag trains at a work site involving a tower consolidation program.

On December 2, 1970 Claimant Anderson filed the instant time claim for the overtime worked by the junior employee, R. L. Kerr. Claimant relies primarily upon the express language of Rule 310(e) of the Signalmen's Agreement in effect as of September 16, 1968:

Article III, Rule 310(e) reads as follows:

"When overtime or double time service is required of a part of a gang, or group of employees, the senior employees of the gang or group of employees, of the classification involved, who are available and desire the work, shall have preference to such work and shall be used."

Carrier resists the claim, contending that on the day in question the signal construction gang had been broken-up into small groups of several men each to perform separate items of work. Under this rationale, Claimant Anderson was assigned to fence hole digging and Signalman Kerr was flagging trains and as such comprised "part of a gang" or a "group" for purposes of Rule 310(e). Accordingly, Carrier maintains that Kerr

was the senior employe in his "group" who was available and desirous of performing the overtime. Therefore, Carrier insists that it does not violate the Agreement to give overtime to the employe working on a particular assignment even if he is not the senior employe in the gang in his class.

We have considered carefully the Agreement language and the awards cited. Upon analysis, we are not persuaded that Carrier's innovative reading of Rule 310(e) is correct. The awards cited in support thereof are either inapposite on the facts and rules involved or decided on a ground too esoteric for application to the instant claim.

The pertinent Agreement provision clearly mandates that the senior employe of the gang has the prior right of first refusal when overtime is required of a part of the gang. (Emphasis added). Concededly, Claimant Anderson was the senior employee in the gang. In these circumstances he should have been given preference for such work.

The contract language here under construction is clear and concise. It does not allude to or even suggest functional subgroupings for seniority purposes nor can we imbue it with such meaning. As we stated in Award 16489:

"We have held on any number of occasions that we follow the basic and ordinary rules of contract interpretation. We are bound by the terms and provisions of the Agreement before us. We have no power or authority and we may not make new provisions, abrogate or alter existing provisions of the Agreement. That is the province of the parties themselves. We endeavor to ascertain and to give effect to the intention of the parties and that intention is to be deduced from the language employed by them."

Accordingly, the claim must be and is sustained.

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

Award Number 20261  
Docket Number SG-19791

Page 3

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

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A.W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1974.