

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Norfolk Southern Corporation (Southern Railway Company)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company (Sou):

On behalf of Signalman J. W. Houser, assigned to Southern Railway, Lines East District Signal Gang #11, for the following:

(a) Carrier violated the Signalmen's Agreement, particularly Rule 4, Rule 33 and letter agreement dated April 9, 1974, when they used junior employee R. Bentley assigned to Signal Gang #11 for overtime work before using senior employee J. W. Houser, assigned to Signal Gang #11 from October 2, 1987 thru October 24, 1987, junior employee working 63 1/2 hours that senior Houser was denied.

(b) Carrier now be required to compensate Signalman J. W. Houser for a total of 63 1/2 hours at his overtime rate for overtime he was denied when Carrier used junior employee R. Bentley assigned to same signal gang to work overtime that senior employee J. W. Houser was entitled to by agreement.

(c) Carrier also be required to reimburse Signalman J. W. Houser for 1,638 miles at 21 cents per mile for extra mileage he had to drive between October 2, 1987 and October 24, 1987 because junior employee was allowed to work this overtime that was due senior employee J. W. Houser.

(d) Carrier be required to compensate Signalman J. W. Houser for 56 hours travel time at \$13.82 per hour or \$773.92, extra travel time he incurred because Carrier permitted junior employee to work this overtime that was due senior employee J. W. Houser by agreement. General Chairman File SR-441. Carrier file SG-716"

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 employees 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 waived right of appearance at hearing thereon.

In this dispute, the Organization asserts that an employee, junior to the Claimant, was assigned work away from his gang, thereby depriving the Claimant of work (which included overtime).

The Board, after careful consideration of the evidence properly presented, the Awards relied upon by the parties and the arguments of the advocates before us, finds that the Claim must fail.

We have carefully considered the presentations of both parties. The primary basis for the Organization's Claim is its reliance on Item 3 of the Parties' Letter of Agreement, dated April 9, 1974 (effective May 1, 1974) which reads:

"In selecting employees to be sent away from a gang, the senior employee(s) in the gang(s) of the class or classes needed (other than Foreman of Leading Signalman) shall be given preference to the assignment."

However, the Organization reliance on this portion of the Letter of Agreement fails to recognize the exception that both parties agreed upon in that same Letter. Specifically, the portion which reads:

"During discussion of the above claims in conference, it was agreed that when necessary in the future to send Signal employees away from a gang or gangs to which assigned to work together at another location (other than with another Signal Gang) for any reason, the following shall govern: [Omitted; Emphasis Added]"

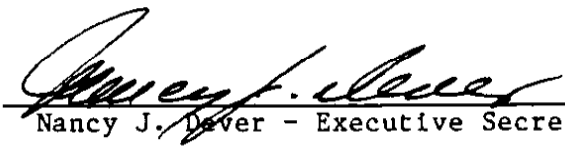
Accordingly, applying criteria in the Letter of Agreement to the facts here, the Claim must be denied.

The text of the Letter of Agreement, when discussing the rules makes it clear that the rules do not apply when the individual is assigned to work with another Signal Gang. Here, the junior employee was sent to work with Signal Gang 4.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1990.