

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30234
Docket No. SG-29989
94-3-91-3-384

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

Claim on behalf of W. C. Rowley et al, for payment of about thirty (30) hours' pay each, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, Rule 5-A-2(a) and (b), when it allowed or permitted a junior Signal Gang to work overtime." Carrier's File No. SG-245. BRS File Case No. 8291-CR.

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 contends that the Carrier violated Rule 5-A-2 in its assignment of work to Signalmen commencing February 26, 1990. The pertinent portion of Rule 5-A-2 reads as follows:

"(a) When it is known in advance at the end of a tour of duty that a portion of a gang is to be worked on a subsequent tour of duty (not a part of their regular assignment) or continuous with the current tour of duty, those with the greatest seniority in the class who were actually performing the work prior to the overtime will be given the first opportunity for the overtime."

As will be seen, the Board finds that the Carrier properly applied the Rule in its assignment of work. Despite some contention to the contrary by the Organization, the Carrier's summary of what occurred appears to be factually accurate. That summary is as follows:

"At approximately 7:00 a.m. on February 26, 1990, a firm at an industry located adjacent to CP 373 in Rochester, NY seriously damaged signal cable, necessitating emergency repairs. Two I&C Signal Gangs were called, one . . . headquartered at Lyons, NY ["Gang A"], approximately 38 miles east of Rochester, and one headquartered at Woodard, NY ["Gang B"], 88 miles east of Rochester. Normal work hours for each gang were 7:00 a.m. to 5:30 p.m.

[Gang A]. . ., since it was closest to the trouble area, was called first and arrived to begin repairing the damage at 7:00 a.m., its normal starting time. [Gang B] . . . arrived later in the morning, and was put to rest at a motel, since it was anticipated repair work would have to continue past 7:00 p.m., when [Gang A] . . . would be compelled to stop work under the Hours of Service Law. [Gang B] . . . relieved [Gang A] . . . at 7:00 p.m., and worked until 7:00 a.m. the following morning. The two gangs rotated shifts until the repairs were complete on February 28, 1990."

As a result, Gang B employees worked more overtime on the assignment than Gang A employees, although some or all the employees on Gang A were senior to those on Gang B.

Since Gang A arrived at their regular starting time, prior to the arrival of Gang B, it is obvious that they were properly put to work. The fact that an emergency existed only emphasized the need to commence work promptly, although this is not the determinative point here. In compliance with Rule 5-A-2 (a), Gang A did continue into overtime work to the extent permitted by the Hours of Service Law. To continue the work, there was no choice but to then assign Gang B.

In support of its position, the Organization cites Third Division Award 27132, which stated in pertinent part as follows:

"Rule 5-A-2 does not define the term 'gang' but we believe Carrier's limiting of the terms to groups of employees supervised by the same foreman is too restrictive and unwarranted. Here employees of a class (Signal Employees) were all assigned to the same task (rebuilding retarders) at the same location at the same time. We hold the group constituted a 'gang' within the meaning of Rule 5-A-2 and therefore those 'with the greater seniority in the class' were entitled to work the overtime."

The Board does not find this Award applicable here. Unlike the situation reviewed in Award 27132, the two gangs were not available "at the same time". Rather, the two gangs alternated in order to keep the repair work going in continuous fashion -- a substantially different situation.

It is true that certain senior Signalmen received less overtime than some junior employees, but the facts do not show that this was in violation of the cited Rule.

AWARD

Claim denied.

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By Order of Third Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.