

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31744
Docket No. SG-31391
96-3-93-3-398

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**
(**Union Pacific Railroad Company**

STATEMENT OF CLAIM:

"Claims on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (UP):

CASE No. 1

Claim on behalf of M.D. Weaver for payment of 83 hours and G. L. Neilson for payment of 104 hours, at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 61, when it utilized a junior employee to perform overtime service on the territory assigned to Claimant Weaver beginning January 20, 1992, depriving the Claimants of the opportunity to perform this work. Carrier's File No. 920369. BRS File Case No. 9031-UP.

CASE No. 2

Claim on behalf of M.D. Weaver for payment of 16.5 hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 61, when it utilized a junior employee to perform overtime service on the Claimant's territory on October 28, 29, 30 and 31, 1991, depriving the Claimant of the opportunity to perform this work. Carrier's File No. 920250. BRS File Case No. 9035-UP."

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 employee 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 were given due notice of hearing thereon.

These two Claims are virtually identical in nature as to the Carrier's action complained of by the Organization. The circumstances in Case No. 2 will be discussed initially, since they occurred first.

The Claimant, a Signal Maintainer, was assigned to Gang 7634. The Organization contends he should have been retained, in an over-time status, to perform work assigned to a junior employee in Gang 7602. The Organization relies principally on Rule 61(a), which reads as follows:

"RULE 61 - EMPLOYED SUBJECT TO CALL

(A) Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and will notify the person designated by the Management of their regular point of call. When such employees desire to leave such point of call for a period of time in excess of two (2) hours, they will notify the person designated by the management that they will be absent, about when they will return, and, when possible, where they may be found. Unless registered absent, the regular assignee will be called, except when unavailable due to rest requirements under the Hours of Service Act, as amended by Public Law 94-348."

The Organization notes that portion of the Rule stating, "the regular assignee will be called." However, this Rule specifies only the calling of employees in "emergencies," clearly not applicable here.

The Organization faults the Carrier for citing Rule 10 in its Submission, without prior specific reference to such Rule on the property. The Board recognizes, however, that the entire dispute as discussed on the property concerned overtime, which is the subject of Rule 10. Thus, reference to Rule 10 is not inappropriate here. Rule 10(d) states:

"(d) When a portion of a gang is required for overtime service, the senior employees of the classes of the gang involved shall, if available, have preference to such overtime work or service."

As the Carrier points out, this supports the view of overtime assignment within a gang. Since the employee working the overtime (or perhaps simply on his assigned schedule) was a member of the gang whose work was involved, there is no contractual basis for the Claimant's right to the work.

The circumstances in Case No. 1 are, as indicated, identical, and thus the Board is guided by its reasoning in Case No. 2. This makes it unnecessary for the Board to review the argument between the parties as to whether this was a "continuing" Claim.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 24th day of October 1996.