

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31815
Docket No. SG-31974
96-3-94-3-336

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Belt Railway Company (BELT):

Claim on behalf of G.D. Timmerman for payment of eight hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 17(a), when it used a junior employee instead of the Claimant to perform overtime service on January 9 and 10, 1993, and deprived the Claimant of the opportunity to perform the work. Carrier's File No. 300-Signalmen. General Chairman's File No. 93-4-BRC. BRS File Case No. 9357-BELT."

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 or 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.

Claimant in this case was employed as a Relief Signal Technician with a work schedule as follows:

Sunday	7:00 A.M. - 3:00 P.M.
Monday and Tuesday	3:00 P.M. - 11:00 P.M.
Wednesday and Thursday	11:00 P.M. - 7:00 A.M.
Friday and Saturday	Days Off

This claim involves the time period beginning at 11:00 P.M., Saturday, January 9, and continuing through 7:00 A.M. on Sunday, January 10, 1993. Claimant performed service on his regular assignment beginning at 7:00 A.M. on Sunday, January 10, and, in fact, worked until 7:00 P.M. on Sunday, January 10 for which he was allowed compensation of eight hours at the straight time rate plus four hours at the time and one-half rate.

The fact situation of this case reveals that beginning on January 9, 1993, a major snow storm hit the work area here in question which required Carrier to take extraordinary measures to protect the signal systems. Beginning at 11:00 P.M. on Saturday, January 9, Carrier utilized a junior Signal Department employee for the snow-related work, but did not call Claimant for such overtime work at that time. There is no dispute between the parties relative to this fact situation.

The Organization argues that the crux of this dispute concerns whether Carrier was required to call the senior Claimant for the overtime work ahead of the junior employee. The Organization alleges that Carrier's failure to first call the Claimant constituted a violation of Rule 17 which reads, in pertinent part, as follows:

"Rule 17(A)(1)

1. When extra or overtime work not covered by Rule 48 and not continuous with regular assignments is required in connection with the Hump signal equipment due to failure emergencies such as, but not limited to, derailments, snow storms, floods, etc., regularly assigned Hump maintainers will be called first, and then signal gang members will be called, and then Road Maintainers for such work in seniority order. Finally, by signal employees in seniority order.

Rule 17(A)(2)

For extra work outside the hump, employees regularly assigned to the territory will be notified first in seniority order. If additional help is needed, other signal maintainers, signalmen, leading signal maintainers, and/or leading signalmen will be called or notified in seniority order."

Carrier, in its presentation of this case, argues that the dispute should be denied on the basis of "common sense" and that the nature of this particular snow storm emergency should grant Carrier the right to take extraordinary measures to deal with the situation. Carrier argues that, in fact, the Claimant in this case was actually called for service at 3:00 A.M. on Sunday, January 10, 1993, and could not be contacted. It states that Claimant's telephone answering machine is the only response received to the attempted call. Carrier further argues that because of the nature of the situation and the applicability of the Hours of Service Act, Claimant was, in fact, used to the extent of the law on January 10, 1993, and therefore, suffered no loss of work opportunity or compensation in this case.

As far as the applicability of Rule 17 and "common sense" is concerned in this case, the very same Rule and the very same snow storm situation involving the very same parties as we have here was examined by this Board in Third Division Award 31426 in which the Board considered the agreed-upon language of Rule 17 and, in a common sense decision, upheld the Organization's position relative to the use of senior employees in preference to junior employees and held that the Rule does not permit Carrier "to speculate on what might happen at a later time." The Board finds no palpable error in the decision reached by Award 31426 relative to the application of Rule 17. Neither does the Board have a problem with the awarding of compensation when an Agreement Rule has clearly been violated.

However, such a conclusion must be tempered by the actual availability of the employee who should have been used under the provisions of the Rule. In this case, Carrier's argument relative to Claimant's unavailability between 3:00 A.M. and 7:00 A.M. on January 10 is well taken. There cannot, in the Board's opinion, be a loss of work opportunity or compensation when the Claimant is unable to be contacted to perform the work for which the Agreement requires his use.

Therefore, as full, final and complete settlement of this case, Claimant is entitled to be compensated from 11:00 P.M. on January 9, until 3:00 A.M. on January 10, 1993, because of Carrier's failure to attempt to call him for the overtime work which was performed during that period by a junior employee. However, the portion of the claim from 3:00 A.M. to 7:00 A.M. on January 10 is denied.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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

Dated at Chicago, Illinois, this 26th day of December 1996.