

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32750
Docket No. SG-32746
98-3-96-3-66**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Terminal Railroad Association of St. Louis**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Terminal Railroad Association of St. Louis (TRRA):

Claim on behalf of C. E. Satterfield for payment of two hours and 40 minutes at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Article V, Section 1, when it called a junior employee instead of the Claimant to perform overtime work on November 29, 1994. General Chairman’s File No. 95-46-A-S. BRS File Case No. 9760-TRRA.”

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.

Claimant, a Signal Maintainer, holds a regular position on the first trick. Signal Maintainer M. Baidy is junior to Claimant and holds a position on the second trick. There is no third trick.

On November 29, 1994 after Baidy was released from duty and before Claimant was on duty, a call out was required at 3:00 A.M. The junior Baidy was called over Claimant. This claim followed.

In their Agreement, the parties have not specifically addressed order of call outs for overtime. The Organization relies upon the general seniority provisions of Article V, Section 1 ("Seniority shall consist of rights based on relative length of service of employes as hereinafter provided and shall extend over the entire property. . ."). The Carrier relies upon a "normal practice on this property to cover a vacant third shift position by working the second shift maintainer over four (4) hours (to 4:00 a.m.) and then bring in a first shift maintainer early four (4) hours at (4:00 a.m.)." At one point in the record, the Organization confirmed the existence of that practice ("The above statement is true"), but later took the position that "such has never been known and recognized by the Organization." However, notwithstanding that seeming conflict in its positions, the Organization points out that because the overtime opportunity arose between shifts, this case is not about a vacancy contiguous to a shift which could be covered by that asserted practice.

For the sake of discussion, this Board will accept the distinction argued by the Organization - i.e., that the practice relied upon by the Carrier does not apply because this case involved a call out for overtime between shifts and does not involve the filling of a vacancy contiguous to a shift. However, that distinction is not sufficient to warrant a sustaining award.

The burden in this case rests with the Organization. To prevail, the Organization must demonstrate a violation of a rule. There is simply no specific rule cited by the Organization which governs the procedure (as opposed to payment) for making call outs for overtime. (See Third Division Award 32705 involving these same parties.)

The Organization's reliance upon the general seniority provisions in Article V, Section 1 is not persuasive. That section provides that "Seniority shall consist of rights based on relative length of service of employes as hereinafter provided. . . ." [emphasis

added]. Because there is no rule in the Agreement governing call outs for overtime of the type involved in this case, there is no "hereinafter provided."

The parties' discussion of this issue subsequent to the occurrences in this matter also does not change the result. We are unaware of an agreement to retroactively apply any resolution to dispose of this matter. To accomplish a different result, the obligation is on the parties to negotiate a procedure to cover this type of situation.

In sum, the Organization's position does not have specific rule support. Its burden has not been met. The claim must be denied.

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 23rd day of September 1998.