

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33517
Docket No. SG-33960
99-3-97-3-428**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Long Island Rail Road**

STATEMENT OF CLAIM:

“Claim on behalf of the General committee of the Brotherhood of Railroad Signalmen on the Long Island Rail Road:

Claim on behalf of M. J. Mazzara for payment of 22 hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 40, when it used junior employees instead of the Claimant for overtime assignments on December 14, 1995, and March 3, 4, and 6, 1996. Carrier’s File No. SG-01-96. BRS file Case No. 10333-LI.”

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.

On December 14, 1995, the Carrier called four employees for an overtime assignment. There is no dispute in the facts that the last employee called was junior to

the Claimant. The Organization filed this instant claim alleging Carrier violation of Rule 40 in failing to call the Claimant to work the position as the senior employee.

The Board has reviewed the claim on merits and finds the Carrier's position persuasive. The Carrier pointed clearly to Rule 40 g (1) which permitted the Carrier to assign overtime based upon selection criteria including the "incumbent of the position for which the overtime is required." The Carrier noted without rebuttal that on December 13, 1995, the Carrier held employees ready due to emergency storm conditions. The Claimant, although a member of the signal gang, was a Communications Cable Splicer and not eligible to be offered the overtime. The junior employee was a Communications Signalman, eligible to do construction work such as might be involved with fallen trees and downed poles.

In this dispute, the Board finds no support for the Organization's position. There is no record of evidence to conclude that the Claimant was eligible for the work. The Carrier argued that the work fell under the jurisdiction of the Line Construction Signalman's position. The Claimant, as a Cable Splicer, did not hold a position to work line construction crews under these circumstances. Finding no evidence to the contrary, the claim lacks proof and 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 22nd day of September 1999.