

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33905
Docket No. SG-33958
00-3-97-3-426**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

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

STATEMENT OF CLAIM:

"Claims on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Long Island Rail Road:

- A. Claim on behalf of N.J. Hentschel, et. al., for payment of 18 hours each at the time and one-half rate, account Carrier violated the current Signalman's Agreement, particularly Rule 40, when it used signal construction forces instead of the Claimants for overtime assignments on November 14, 1995." Carrier's File No. SG-23-95. BRS File Case No. 10328-LI.**
- B. Claim on behalf of J. Piotrowski, et. al., for payment of 20 hours each at the time and one-half rate, account Carrier violated the current Signalman's Agreement, particularly Rule 40, when it used signal construction forces instead of the Claimants for overtime assignments on November 14, 1995." Carrier's File No. SG-25-95. BRS File Case No. 10330-LI.**
- C. Claim on behalf of D.W. Johnson, et. al., for payment of 60 hours each at the time and one-half rate, account Carrier violated the current Signalman's Agreement, particularly Rule 40, when it used signal construction forces instead of the Claimants for overtime assignments on December 19, 20 and 21, 1995." Carrier's File No. SG-11-96. BRS File Case No. 10331-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.

These claims protest Carrier's assignment of signal construction forces to work overtime on the various claim dates to perform anticipated storm-related signal problems rather than assigning the overtime signal work to its maintenance forces. The record reveals that Carrier sent its construction forces home at noon on November 14, 1995 to get eight hours rest in anticipation that a 12 hour shift would be needed commencing at 8:00 P.M. to deal with impending storm system problems.

The claim dealing with the November 14, 1995 assignment was filed on January 6, 1996, appealed on April 6, 1996, conferenced on June 17, 1996, and Carrier sent its final denial on July 8, 1996. The other claims dealing with the December 19-21, 1995 dates were finally denied by Carrier on July 24, 1997. By letter dated March 31, 1997, the Organization informed Carrier that they intended to progress the claims to the Board. The Notice of Intent was filed with the Board on May 30, 1997.

The Organization contends that Carrier violated the order of overtime assignment set forth specifically in Rule 40(g), which requires the overtime to go to the incumbent of the position or the senior qualified employee working in the class, subdivision or gang in which the work is performed. It argues that signal maintenance work, including storm-related problems, are the normal function of the signal maintenance crew, not the construction forces, and that such overtime has traditionally been assigned to maintenance employees such as Claimants, whose regular job it is to deal with signal problems.

Carrier initially argues that these claims are procedurally defective under Rule 50(c), which requires that proceedings be initiated before the Board within nine months of the date of the final decision denying the claims. It notes that the Board is without jurisdiction to reach the merits since these time limits have been strictly construed and enforced, citing Third Division Awards 22574, 18640. With respect to the merits, Carrier contends that work on storm-related damage is not exclusively maintenance work, nor is Carrier restricted by craft in its assignment. It avers that it was the most efficient use of its manpower in an emergency situation to retain the maintenance gangs on their regular assignments and stop construction work to provide them with sufficient rest to enable them to work a 12 hour shift later that night when the height of the forecasted storm problems would occur. Carrier asserted that Rule 40(g) did not apply in an emergency situation.

The Board has carefully reviewed the record, and is compelled to find that we are without jurisdiction to decide these claims on their merits, since the Organization did not progress them to the Board within the nine month time period required by Rule 50(c). The final denials occurred on July 8 and 24, 1996 respectively. While the Organization informed Carrier that it intended to progress the claims to the Board on March 31, 1997, within the nine month period, it did not actually do so until May 30, 1997, over one month after the filing deadline had lapsed. There is no evidence that the Organization either sought, or obtained, an extension of time for such filing from Carrier. As noted by Arbitrator Marx in Public Law Board No. 4622, Award 29 "... The strict enforcement of the rules governing claim resolution are generally taken with great seriousness. The Board is without authority to vary the terms of Rule 50, even if a sense of reasonableness and flexibility would appear to be called for." Regrettably, the Board cannot reach the merits of the dispute, and must dismiss these claims for lack of jurisdiction.

AWARD

Claim dismissed.

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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 January, 2000.