

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34087
Docket No. SG-34880
00-3-98-3-576**

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: (
(Union Pacific Railroad Company (former Southern Pacific)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Co. (former Southern Pacific):

Claim on behalf of K. N. Gangler for payment of four hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 13, when it did not use the Claimant to perform overtime work on an adjoining maintenance territory on March 4 and March 6, 1997, and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 1084389. General Chairman’s File No. SWGC-1587. BRS File Case No. 10657-SP.”

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 March 13, 1997, the Claimant began processing a claim alleging violation of Rule 13. He argued that because the Signal Maintainer for the Elvas District was not available, as adjoining Maintainer, he was entitled to the overtime work that was performed by Signal Gang No. 5 on both March 4 and 6, 1997. The Organization pursued this claim in that the Rule is clear that the Claimant should have been called for the work performed. Rule 13 in dispute states:

“Employees will be free from duty on holidays, rest days and after assigned working hours on assigned work days. Signal Maintainer recognize the possibility of emergency work on their assigned territories and will respond as promptly as possible when called. The employee assigned to a maintenance territory or plant will be called for all service on his assigned territory, unless registered absent. If he cannot be reached, one of the adjoining Signal Maintainer will be called. If that Signal Maintainer cannot be reached, any Signal Department employee covered by this Agreement may be called. If the Company holds employees on call, they will be paid at the overtime for actual time held.”
(Emphasis added)

The Organization points out that Rule 13 states “all” and that the facts herein are applicable. The Claimant had not registered absent. The work was on his assigned district and he was therefore entitled to be compensated as per the Agreement.

The Carrier argued that the claim was vague in that it did not identify the type of work or service performed by Signal Gang No. 5, a construction gang that worked with a Fiber Optics crew on the territory. The Carrier maintained that Rule 13 was inapplicable in that the construction crew had been assigned the work and was permitted the overtime on the assignment. It argued that the work performed was not the work associated with the Claimant’s right to be called for service.

The Board has considered the record, Rule and dispute in full. Central to our decision is the lack of any substantive evidence or rebuttal from the Organization to the Carrier’s denial of applicability. The claim is centered upon the word “all” from the Rule and the Organization’s argument that it was applicable to the facts at bar. However, we cannot from this record establish those facts which would substantiate the claim. There is nothing in this record showing that the construction work on the Claimant’s assigned territory was work covered by the Scope of the Agreement to the

Claimant's position. Additionally, the Carrier pointed out that Signal Gang No. 5 was entitled to the overtime as it worked in tandem with the fiber optic crew. There is no showing by the Organization that the overtime requested under Rule 13 was a call for overtime due to an emergency or otherwise, rather than a continuation of assignment to which as the Carrier stated the Signal Gang "was entitled to any overtime that occurred due to that assignment." There is no rebuttal to the Carrier's position that it was not work that should have applied to a call for overtime for the Claimant. The Organization did not deny in this record that the work performed was "part and parcel of a work order for the construction gang" or that "any overtime that occurred" belonged to that crew. Except by argument that it belonged to the Claimant, the Organization did not state that the construction crew was performing work regularly and historically that of the Claimant. Accordingly, the claim must be denied for lack of proof.

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 25th day of May, 2000.