

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35094
Docket No. SG-31877
00-3-94-3-206**

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

“Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (CONRAIL):

Claim on behalf of J. P. Stein for payment of 113 hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 5-A-1(h) and Appendix ‘P’, when it used other employees to perform overtime work on the Claimant’s assigned territory from April 13 to May 4, 1992. Carrier’s File No. SG-557. General Chairman’s File No. RM2444-52-593. BRS File Case No. 9345-CR.”

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.

This case involves a claim by the Organization that the Carrier violated the Agreement by denying the Claimant opportunities to work planned overtime on his regular assigned section. The Organization asserts that according to the Agreement, the senior Maintainer is entitled to planned overtime on his regular assigned section. The pertinent contract language, according to the Organization, is found in Rule 5-A-1(h) and in Appendix "P" of the parties' Agreement.¹

The Organization asserts that Appendix "P," which provides a procedure for calling C&S Department employees for trouble involving Maintainer's work outside their regular working hours, establishes a call list from which the senior regular employee on the territory will be called for overtime work. Further, according to the Organization, Rule 5-A-1(h) requires that overtime be assigned to the senior regular employee after it has been determined that there is no available unassigned employee who does not have 40 hours of work that week.

The disputed work involved repairs and testing of signal apparatus associated with the operation of a ballast cleaner working within the Claimant Maintainer's territory. According to the Organization, the Claimant was the senior Maintainer on his section. It maintains, therefore, that he should have been afforded the first opportunity to perform the work. The Organization asserts that the proper remedy is to make the Claimant whole for all lost work opportunities.

The Carrier, on the other hand, asserts that Rule 5-A-1(h) and Appendix "P" are not applicable. It asserts that Rule 5-A-1(h) does not pertain to overtime assignments, but rather applies strictly to work that is not part of any assignment. It maintains that Appendix "P" does not apply because it creates a list for trouble calls, and does not pertain to scheduled overtime.

According to the Carrier, the governing language is found in Rule 5-A-2(a), which states:

¹Rule 5-A-1(h) reads as follows:

"Where work is required by the Company to be performed on a day which is not a part of any assignment, it may be performed by an available unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee. (See Appendix "P" for trouble calls involving Maintainer's work.)"

“When it is known in advance of the end of a tour of duty that a portion of a gang is to be worked on a subsequent tour of duty (not a part of their regular assignment) or continuous with the current tour of duty, those with the greatest seniority in the class who were actually performing the work prior to the overtime will be given the first opportunity for the overtime.”

The Carrier asserts that Rule 5-A-2(a) provides that an employee who performs work on straight time is entitled to perform that work on overtime. It further asserts that it has always been the practice that an employee who performs work such as protecting the ballast cleaner on straight time is entitled to the overtime for that same work. Thus, the Carrier maintains that because the junior employees were properly assigned to work with the ballast cleaner during normal work hours, they were entitled to the overtime associated with that work.

After reviewing the record evidence, we have determined that the Organization’s claim must be denied. We agree with the Carrier that Rule 5-A-1(h) does not govern this dispute. So, too, Appendix “P” is inapplicable. It refers to emergency trouble calls, and does not address scheduled overtime that is at issue here.

However, we do not agree with the Carrier that Rule 5-A-2(a) is controlling. That provision simply provides that employees performing work during a tour of duty shall be given the first opportunity to perform that work on overtime, provided it is known prior to the end of the tour of duty that the overtime is being scheduled. This dispute involves overtime that precedes a tour of duty, and Rule 5-A-2(a) does not apply.

In fact, this record does not identify any specific contractual language that limits the Carrier’s authority to assign the overtime in the manner it did. In our view, it simply was not an abuse of the Carrier’s discretion to have assigned the overtime work at issue to the employees who performed that same work during normal hours.

AWARD

Claim denied.

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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 15th day of November, 2000.