

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35596
Docket No. SG-35428
01-3-99-3-323

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

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

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 H.J. Buchbinder, for eight hours at his time and one-half rate, account Carrier violated the current Signalman’s Agreement, particularly Rule 1(e) and 40(h), when it failed to assign the Claimant to work holiday overtime coverage as relief for an employee of the same seniority class, from 4:00 p.m. to midnight, on January 19, 1998, denying the Claimant the opportunity to perform this work. General Chairman’s File No. SG-08-97. BRS File Case No. 10959-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.

This claim filed on February 28, 1998 protests the Carrier's failure to assign the Claimant, first trick Signal Inspector, to work overtime holiday coverage as relief for an employee of the same seniority class, as a violation of Rule 40(h), which states as follows:

"RULE 40 - OVERTIME

- (g) When it becomes necessary to assign an employee on a scheduled holiday, such employee shall be selected on the following basis:**
 - (1) Incumbent of the position will be offered the overtime assignment.**
 - (2) If the incumbent declines to work, the senior qualified available employee working in the class of the overtime assignment as set out in Rule 12 at the section, subdivision, or gang will be asked to work. In the event no such employee is available to cover the holiday assignment, the incumbent of the position shall be required to work the scheduled holiday coverage."**

The record reflects that the Carrier required two employees to work overtime for holiday coverage on all three tricks at Babylon and in other sub-divisions. The two senior incumbents on the first trick at Babylon, Signal Inspectors D'Aries and Callaghan, accepted the assignment. The Claimant was next in line as incumbent of that assignment. On the second trick, Signal Inspector Wylie and Assistant Signalman Siegel, who were working that assignment at the time, were canvassed and accepted the overtime. The Carrier noted that Assistant Signalmen, a separate class under the Agreement, have, by long-standing practice, been assigned to work with a mechanic on a three-month rotation basis, and that once assigned to a rotation, are treated as incumbents. This assertion was not rebutted or responded to by the Organization on the property.

The Organization argues that the Carrier violated the Agreement by assigning a different class employee, Assistant Signalman, to cover the holiday relief overtime position held by a Signal Inspector. It asserts that the Claimant had more entitlement to the position within his class than did the Assistant Signalman under Rule 40(h), and

that by working on a rotational basis, the Assistant Signalman could not be considered an incumbent to any position.

The Carrier contends that Rule 1(e), cited by the Organization, is not germane because it concerns regular relief assignments, not holiday coverage. It avers that the Claimant was one of many incumbents to the first trick position that was filled by more senior Inspectors. The Carrier notes that there were no Assistants assigned to Inspectors on the first trick. Based upon its operational needs, the Carrier determined that its staffing requirements for the second and third tricks on this and other subdivisions included one Inspector and one Assistant Signalman. It asserts that Wylie and Siegel were the only incumbents in those positions in this subdivision on that tour at that time, and that the work was their normal assignment. It notes that the Organization has not complained about similar assignments in other subdivisions on this holiday. The Carrier argues that the composition of the work force is a management prerogative, and that it did not violate the Agreement in making this assignment.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of proving a violation of the Agreement in making the protested second trick holiday overtime coverage assignment on January 19, 1998. The Organization was unable to show that the Carrier's determination that it needed an Inspector and an Assistant Signalman for holiday coverage on the second (and third) trick was an abuse of management discretion, especially in light of the fact that those tricks had been staffed by that same complement during the normal tour. Thus, the Claimant was outside the class of Assistant Signalman and would neither qualify as an incumbent to that position nor be entitled to holiday overtime in that position under Rule 40. Further, the Organization never rebutted the Carrier's contention that Assistant Signalmen, when assigned on a three-month rotation for training purposes, were treated as incumbents in the positions in which they were currently working during the assignment and entitled to continue to work with the same Inspector throughout its duration. The record in this case does not support the Organization's claim that the Carrier violated Rule 40 in making the protested holiday overtime assignment.

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 24th day of July, 2001.