

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35597
Docket No. SG-35438
01-3-99-3-329

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 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 D. Mastro and R.F. Iorio, Jr., for 12 hours at their respective time and one-half rates including differential pay, account Carrier violated the current Signalman’s Agreement, particularly Rule 40(g), when it used junior employees to perform overtime work on January 24, 1998, near Babylon Yard, and denied the Claimants the opportunity to perform this work. General Chairman’s File No. SG-02-98. BRS File Case No. 10960-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 inclusion of two Assistant Signalmen in Signal Gang 5 that was assigned overtime on the date in issue, rather than the Claimants, a Signal Maintainer and Signal Helper with greater seniority than the two Assistant Signalmen. The overtime assignment involved was to perform Signal Test 43 at designated locations near the Babylon yard. The Carrier determined that one Foreman was necessary to plan, lead and direct, four Signal Inspectors were needed to test the equipment, and two Assistant Signalmen were needed to be gang watchmen under Road Worker Protection (RWP) and to assist the Inspectors. There is no dispute that the Claimants were qualified to do RWP work. In issue is whether such assignment violated Rule 40(g)(2) which requires that overtime be assigned to the senior qualified available employee working in the class of the overtime assignment.

The Organization argues that because the Claimants were qualified to perform the type of work for which Assistant Signalmen were used, and had far greater seniority, they were entitled to the overtime assignment under the terms of Rule 40(g)(2). It asserts that the Carrier has no right to make up the composition of a gang to violate Rule 40. The Organization points to the following precedent to support its position that seniority is a paramount right that must be applied in assigning overtime unless the contract specifically provides otherwise: Third Division Awards 30833, 14161, 5346. It requests a monetary remedy for lost work opportunity.

The Carrier contends that it has the management right to determine the composition of the gang necessary to perform the type of work involved in the overtime, and that once it has done so, it followed the provisions of Rule 40(g)(2) in assigning the overtime to the senior qualified employees in the class. It notes that the Claimants were not in the Assistant Signalman class. The Carrier agrees that all signal employees have the necessary qualifications to be gang watchmen, but asserts that because it is not exclusively Inspector work under the RWP, there was no violation to have Assistant Signalmen perform it in this case. It asserts that, because all employees assigned to the gang were the senior qualified employees available working in the class, there was no violation of Rule 40(g)(2).

A careful review of the record convinces the Board that the language of Rule 40(g)(2) does not require the Carrier to assign overtime to senior qualified employees regardless of the class determined to be necessary to perform the task. While it may be true that any class of Signalman could have performed the RWP task assigned to the Assistant Signalmen in this case, the Organization failed to prove that the Carrier was

required to compose the gang in such a way as to provide the overtime opportunity based solely on seniority and regardless of class. The Claimants are in two different classes, Class 3 Maintainer and Class 5 Helper. There is no evidence that the contract requires the Carrier to ignore designating appropriate classes for the work involved in favor of seniority without regard to class. The language of Rule 40(g)(2) states otherwise. Because the Organization failed to establish that the work involved belonged solely to either Class 3 or 5, rather than Class 4 Assistant Signalmen, it cannot prove that the Carrier's composition of the gang was designed to violated the Claimants' seniority rights to overtime. Therefore, the claim must fail.

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 24th day of July, 2001.