

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35757  
Docket No. SG-35562  
01-3-99-3-490**

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: (  
(National Railroad Passenger Corporation (Amtrak)**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen:**

**Claim on behalf of M. Mazenkas for payment of 12 hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Appendix “F,” when it used a junior employee for overtime on the Old Colony Line, on September 8, 9 and 10, 1997. Carrier’s File No. NEC-BRS(S) SD-778. General Chairman’s File No. RM3160-120-0698. BRS File Case No. 10940-NRPC(S).”**

**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 November 3, 1997 protests the assignment of a junior employee to overtime on the Old Colony Line on the claim dates as a violation of the Claimant’s**

seniority right to be called first from the call list in accord with Appendix "F." At the time in issue, the Claimant was a Maintainer assigned to the Massachusetts Bay Transportation Authority (MBTA) Commuter Service District, headquartered at Walpole, Massachusetts. Maintainer Brian Mandeville, who received the disputed overtime assignment, was working on the MBTA's Old Colony Rehabilitation Project.

The Organization argues that the Claimant was senior to Mandeville in Class C on the call list, was available, and should have been assigned the overtime. It asserts that the Carrier is perpetuating the "Old Buddy System" by disregarding seniority as a factor in assigning overtime. The Organization avers that Appendix "F" governs Maintainer work outside normal working hours and that Rule 30 is for overtime involving gangs. It seeks payment for the 12 hours overtime worked by Mandeville on the claim dates at the overtime rate.

The Carrier contends that the disputed overtime assignment was in accordance with Rule 30(a) of the Agreement, which provides, in pertinent part:

**"Overtime Preference - Continuous With Tour of Duty**

(a) 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."

It asserts that Mandeville was performing the work involved in the disputed overtime assignments during the eight hours of his regular assignment, and was required to remain on duty to conclude that work for four hours of overtime each day. The Carrier argues that Appendix "F" does not apply because this was not a trouble call for which it was obligated to use the call list, but overtime continuous with Mandeville's tour of duty. In any event, the Carrier asserts that the claim is excessive because the Board has held that the straight time rate is appropriate for violations of these provisions.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of proving a violation of Appendix "F" in this case. First, it failed to show that the disputed overtime performed by Mandeville was a trouble call covered

by Appendix "F," or that Mandeville did not stand first out on the call list. Second, the Organization did not dispute on the property that the overtime was continuous with Mandeville's tour of duty or that the work involved was what Mandeville was performing during his regular assignment. Under those circumstances, we are convinced that Rule 30(a) applies, and that the Carrier properly gave preference to Mandeville in this overtime assignment in accord with its provisions. There is no support for the Organization's assertion that Rule 30 only applies to entire gangs, and no facts in the record concerning whether a gang was involved in this overtime assignment. Accordingly, the claim must fail 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 24th day of October, 2001.**