

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35761
Docket No. SG-35704
01-3-99-3-649**

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 Brother F. X. Connor for payment of sixteen hours pay at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly paragraph 8 of the February 1, 1987 Agreement, when, on December 13 and 14, 1997, it used a junior employee for overtime service on the Qwest project in Wilmington, DE. Carrier File No. NEC-BRS(S)-SD-806. General Chairman’s File No. RM3205-65-0898. BRS File Case No. 11051-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 February 7, 1998 alleges that the Carrier failed to follow the established calling procedure when assigning overtime work on the Qwest project on Saturday and Sunday, December 13 and 14, 1997, thereby by-passing the Claimant, the senior employee on the call-in list, and using a junior employee in violation of Appendix F. It seeks 16 hours pay for the Claimant at the time and one-half rate for a missed overtime opportunity.

The pertinent sections of Appendix F, Agreement Providing a Procedure for Calling C&S Department Employees for Trouble Involving Maintainer's Work Outside Their Regular Working Hours, are set forth below:

- "1. A form showing the information included in the attached sample will be used to record the calling and response to calls for work outside of employees' regular working hours.

* * *

4. All of the information called for on the form must be recorded at the time the employee is called.

* * *

7. Employees subject to call for work outside of their regular tour of duty under this Agreement must keep their name, address and telephone number on file with their Supervisor.
8. Employees will be called from the appropriate list for work in the order in which their names appear on the list.
9. A reasonable effort will be made to comply with the procedure outlined above but shall not be permitted to delay getting a qualified employee to report promptly at the point necessary to cope with the situation."

The record reveals that the Claimant was on duty as a Signal Maintainer on Thursday, December 11, 1997 when the trouble desk in Philadelphia was assigned to obtain one man to provide protection to Qwest employees installing a fiber optic system

along the right-of-way during the upcoming weekend. A statement from the trouble desk employees reveals that they exhausted the Wilmington, Delaware, call list without success, and began calling employees from the Perryville, Maryland, call list, which included Claimant. They called the Claimant once by radio and twice on his company provided pager, and when he did not respond, they went down the call list and filled the position with a junior employee.

The Organization argues that the Carrier violated Appendix F because it did not use the Claimant's home phone number, which is the only one listed on the call list, to offer him the overtime assignment. It asserts that beeper numbers are not listed and have not been negotiated as the proper method of calling an employee for overtime. The Organization contended on the property that beepers are not always reliable and do not work in all locations, and that because no emergency existed, the Carrier was obligated to try to reach the Claimant by telephone later that day before continuing down the list and filling the overtime assignment. It argues that the proper remedy for a missed overtime opportunity is the amount the Claimant would have received had he worked the assignment, citing Third Division Award 22569.

The Carrier contends that it fully complied with Appendix F by calling the Claimant three times while he was on duty to offer him the overtime assignment. It notes that the Claimant's failure to respond to his pager or radio in a timely fashion was the reason why he was not offered the assignment. The Carrier argues that Appendix F does not prohibit it from contacting an employee on the call list while at work or via radio or pager, and only lists phone numbers for employees to be reached when they are off-duty. It asserts that the Organization failed to meet its burden of proving a violation, relying upon Third Division Awards 25177 and 25639. The Carrier argues that the claim is excessive because the pro rata rate has been established as the appropriate rate to compensate an employee for work not performed on this property, citing Public Law Board No. 3932, Award 14; Public Law Board No. 4549, Award 1; Third Division Awards 26235 and 26534.

A careful review of the record convinces the Board that the Organization failed to establish a violation of the calling Agreement in this case. The Organization did not present any proof to rebut the statement from the trouble desk employees that they tried to reach the Claimant three times, twice by pager and once by radio, on December 11, 1997 while he was at work, in compliance with his position on the call list, and that he did not respond. There is no statement from the Claimant indicating that he did not

receive the pages or radio contact, or that he was out of reach by those methods on that date. Under such circumstances, we must conclude that the Carrier satisfied its obligation to call the Claimant in the seniority order in which he appeared on the call list. Appendix F sets out a procedure for reaching off-duty employees by using their telephone numbers on the call list. It does not prohibit the Carrier from attempting to reach an employee while on duty, nor does it indicate how long the Carrier must wait to hear from an employee prior to continuing down the call list. The Carrier asserts that it was necessary for it to notify the contractor as soon as possible that it would be able to provide the necessary protection on the weekend so it could mobilize its forces in a timely manner. On the basis of this record, we are unable to find that the Carrier did not make a reasonable effort to comply with the calling procedure in this case.

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.