

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36079
Docket No. SG-35859
02-3-99-3-866**

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
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp. (NRPC-S):

Claim on behalf of D. P. Buker, for payment of seven hours at the time and one-half rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Appendix "F" (8), when it permitted a junior employee on the call list to perform overtime service without calling the Claimant. Carrier File No. NEC-BRS(S)-SD-813. General Chairman's File No. RM3221-120-0199. BRS File Case No. 11056-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 September 24, 1998 alleges that the Carrier failed to call the appropriate Inspector for overtime work on Sunday, July 26, 1998 in violation of Appendix F. It seeks seven 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.

- “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.
10. In the application of this understanding two calls will be made to the first six (6) employees whose names appear on the calling list. A second call will not be required where such employees are identified as not at home on the first call. One call will be made to other individuals on the list.”

The record reveals that the Claimant held a regular assignment as an Inspector, with Saturday and Sunday as his rest days. On the morning of Saturday, July 25, 1998 the Carrier was advised that the Groton Harvard Road crossing gates and lights were malfunctioning. The Carrier assigned Maintainers to watch the crossing, and called employees on the Inspector's call list to inspect the apparatus. The first four Inspectors on the call list were called but unavailable. The Claimant was fifth on the call list. At 2:30 P.M., before the Carrier called him, the Claimant notified the Carrier that he would be unavailable for calls until the following morning. The Carrier called all remaining employees on the Inspector's call list, but none were available.

Inspector E. Scottile reported for duty at 7:00 A.M. on Sunday, July 26, 1998, as part of his regular assignment. Because the Carrier was unable to obtain an Inspector from the call list the previous day, it instructed Scottile to perform the necessary inspection, which he did during his regular eight hour shift, plus an additional two hours which were compensated at the overtime rate. The Claimant was later called to assist Scottile, and he worked between 2:30 P.M. and 7:30 P.M., receiving five hours at the overtime rate of pay.

The Organization argues that the Carrier violated Appendix F because it did not use the Inspector's call list on Sunday, July 26, 1998 for this overtime assignment. It notes that Scottile is not the Inspector on the territory in question, while the Claimant is, and that the call list states that the Inspector responsible for the section will be called first, prior to using seniority. The Organization asserts that the Carrier failed to follow the clear mandate set forth

in Appendix F, relying on Third Division Awards 12632, 16573, 19695, 20687, and that the overtime rate is the appropriate compensation, citing Third Division Awards 22569 and 28389.

The Carrier contends that there is no provision in the Agreement that requires the use of an employee on overtime when other employees are available to perform the work at the straight time rate, citing Third Division Award 31782. It argues that Appendix F was neither applicable to the situation at hand, nor violated, because Scottile worked his regular assignment between 7:00 A.M. and 3:30 P.M. on July 26, 1998 performing the necessary inspection, for which he was paid at the straight time rate. The Carrier notes that the Claimant was called for, and did receive, five hours of overtime work on July 26, 1998 when it was determined that Scottile needed assistance.

A careful review of the record convinces the Board that the Organization failed to establish a violation of the Agreement in this case. There is no dispute that the inspection work in issue was not performed on overtime on July 26, 1998 until, at the very earliest, 2:30 P.M., when the Claimant was called in to assist Inspector Scottile, who was still on his regular shift. It has been held on this property that there is no violation of the overtime calling requirements of the Agreement when the disputed work is performed by an employee on duty at the straight time rate. Third Division Award 31782. Regardless of whether the Claimant made himself unavailable for overtime prior to 7:30 A.M. on Sunday, July 26, 1998, the fact remains that the Carrier is free to assign a qualified employee on straight time to perform the work in issue rather than utilizing the overtime call list.

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 18th day of June, 2002.