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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36081
Docket No. SG-35950
02-3-00-3-25

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 on the National Railroad Passenger Corp. (NRPC-S):

Claim on behalf of E. F. Horney, for payment of eight 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 to perform overtime service without calling the Claimant. Carrier File No. NEC-BRS(S)-SD-816. General Chairman's File No. RM3227-65-0299. BRS File Case No. 11082-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 August 1, 1998 alleges that the Carrier failed to call the Claimant, a Test Inspector assigned to Gang E-032, for overtime work to support

contractors in the B&P Tunnel inspecting manholes and pull boxes that were used for the Qwest fiber cable on June 6, 1998, in preference to Foreman J. C. Digiacomo who held an advertised position in Gang E-400 at the time, in violation of Appendix F. It seeks eight hours pay for the Claimant at the time and one-half rate for a missed overtime opportunity.

The pertinent section of Appendix F, Agreement Providing a Procedure for Calling C&S Department Employees for Trouble Involving Maintainer's Work Outside Their Regular Working Hours, and Rule 30 are set forth below.

"APPENDIX F

8. Employees will be called from the appropriate list for work in the order in which their names appear on the list.

RULE 30 - 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 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.
- (b) If additional employees are required for such overtime, other qualified employees in the gang will be offered the overtime in seniority order.
- (c) The Maintainer working in his assigned territory with the gang when work as referred to in paragraph (a) is required, will be entitled to such overtime before members of the gang are used. . . ."

The record reveals that Digiacomo was originally assigned the Foreman position with Gang E-502, which worked with the Qwest Project. That position was abolished effective May 20, 1998. DiGiacomo was awarded the Foreman position with Gang E-400 effective May 21, 1998, and the work supporting the Qwest Project was assigned to this

gang. He had been performing support work for the Qwest Project during his regular schedule, Monday through Friday, 6:00 A.M. to 2:30 P.M. prior to June 6, 1998. On the claim date, Qwest employees were performing work on their fiber optic system and protection was necessary. The Carrier's assignment of Digiacomo to this overtime is the basis for this claim, as the Organization disagreed that Digiacomo's regular assignment was to protect Qwest employees.

The Organization argues that the Carrier violated Appendix F because the Claimant is senior to Digiacomo on the overtime call list, and there was no showing that Digiacomo was regularly assigned to protect Qwest employees. The Organization contends that the appropriate rate for compensation for a lost overtime opportunity is the overtime rate of pay, citing Third Division Awards 27181 and 22569.

The Carrier contends that, even if the Claimant was senior to Digiacomo, neither Rule 30 nor Appendix F granted him preference to overtime on work on the Qwest Project. It asserts that, because Digiacomo's regular assignment was to perform protection service for contractors on the Qwest Project prior to the preplanned overtime, he clearly possessed preference for the overtime under Rule 30(a) and (c). The Carrier argues that Appendix F is inapplicable because the assignment in dispute did not involve a trouble call requiring the service of an Inspector, but was preplanned overtime. It further avers that Appendix F requires overtime to be offered to employees on the call list in the order their names appear, not in seniority order. The Carrier argues that the claim is excessive, because it seeks pay for time not worked at the overtime rate.

A careful review of the record convinces the Board that the Organization has failed to sustain its burden of proving a violation of Appendix F or Rule 30 in this case. While the Organization appeared to dispute that the preplanned overtime work in issue was part of the primary responsibility of Digiacomo's Gang E-400, as asserted by the Carrier, it failed to present any evidence to contradict this contention or to prove that the Claimant's gang provided protection services to Qwest employees on any date certain prior to June 6, 1998. Under the terms of Rule 30(a) and (c), it is clear that the Carrier is required to offer preplanned overtime first to those employees with greatest seniority in the class who were actually performing the work prior to the overtime assignment. Because the Organization failed to prove that Digiacomo was not assigned to protect Qwest employees during his regular assignment on June 5, 1998, as the

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Carrier claimed, or that the Claimant was so assigned, 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 18th day of June, 2002.