

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36840
Docket No. SG-36778
04-3-01-3-334

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 C. C. Carter for payment of 5 hours and 30 minutes at the pro rata rate. Account Carrier violated the current Signalmen's Agreement, particularly the Overtime Call List Agreement, when on January 9, 2000 Carrier allowed a junior employee to perform overtime service on a TOL problem on Track #1 between Atwells and Cranston, RI. Carrier's action deprived the Claimant of the opportunity to perform this work. Carrier's File No. NEC-BRS(N)-SD-901. General Chairman's File No. 08-00. BRS File Case NO. 11661-NRPC-N.”

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 protest the Carrier's action in calling in a junior employee for trouble at Providence, Rhode Island, to repair a Track Occupied Light (TOL) on Sunday, January 9, 2000 between 10:00 A.M. and 3:30 P.M. rather than the Claimant, a senior Foreman of the section, relying upon the following Agreement language:

"APPENDIX B-5 – NORTHERN DISTRICT

1. Call Lists

B. The "call list" will include employees in the order listed below, by section in seniority order:

5. Foremen on section."

The record reflects that the Claimant was offered and accepted a four hour pre-planned overtime assignment at Westerly, Rhode Island, on his rest day, January 9, 2000, between 12:00 P.M. and 4:00 P.M., and was scheduled for such overtime assignment at the time the trouble call in issue was received by the Carrier at 10:00 A.M. on January 9, 2000. The Carrier determined that the Claimant was unavailable to perform the trouble call, as it could not be certain he would be able to complete it in time to report to his pre-planned overtime assignment, so it utilized Foreman McAdams from the overtime call list. The Claimant worked and was compensated for overtime on January 9, 2000 between 12:00 P.M. and 4:00 P.M.; McAdams was compensated for overtime on the trouble call for work between 10:00 A.M. and 3:30 P.M. when the job was completed.

The Organization argues that the only guide to assignment of overtime is the Overtime Calling Agreement which required the Carrier to call employees within the same classification in order of seniority, and that the Carrier is not free to make arbitrary assumptions about the time it will take to complete the task prior to utilizing the call in list, relying on Third Division Awards 27181 and 31240. The Organization

asserts that although the claim seeks five and one half hours pay at the pro rata rate, only two hours would be appropriate covering the period 10:00 A.M. to 12:00 P.M. when the Claimant commenced his overtime assignment.

The Carrier contends that the Claimant was unavailable for the TOL related overtime, as he had already been offered, and accepted, an overtime assignment beginning at 12:00 P.M. on January 9, 2000 under the provisions of Section VII.A., Planned Overtime, based upon his seniority standing on the call out lists, and was ineligible for a further assignment. The Carrier argues that it is not obligated to restructure its prearranged overtime assignment after they are made based upon the fact that a subsequent assignment becomes available, citing Third Division Award 36044. It also asserts that the claim is excessive as it encompasses three and one half hours of pay for a time period when the Claimant already received overtime pay.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving a violation of the Overtime Call List Agreement in this case. There is no doubt in this case that the Carrier recognized its obligation to offer overtime to Foremen in order of seniority, and the Claimant's acceptance of a pre-planned overtime assignment on January 9, 2000 was the result. The overtime assignment to the trouble call involved in this claim was offered to the next most senior Foreman who had not previously been offered and accepted overtime on January 9, 2000. As the Board found in Third Division Award 36044, the Organization failed to prove that the parties intended Carrier's Overtime Call List obligation to require the Carrier to continually realign its planned overtime work force on each occasion when another unscheduled assignment subsequently arises during the same period. We conclude that it was reasonable for the Carrier to consider the Claimant unavailable for the disputed overtime assignment under the facts of this case.

AWARD

Claim denied.

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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 28th day of January 2004.