

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36842
Docket No. SG-36494
04-3-00-3-714

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad)

STATEMENT OF CLAIM:

“Five (5) Claims on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company:

CLAIM A

Claim on behalf of J. M. Piniak for payment of 5 hours at the time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly Rule 13 when on August 11, 12, and 13, 1999, it allowed a junior employee to perform overtime service and deprived the Claimant of the opportunity to perform this work. Carrier File No. 1213662. General Chairman's File No. UPGCW-LL92-13002. BRS File Case No. 11469-UP.

CLAIM B

Claim on behalf of J. M. Piniak for payment of 33 hours and 30 minutes at the time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly Rule 13 when on August 16, 17, 20, 25, 26, 27, 28, 30, and 31, 1999, it allowed a junior employee to perform overtime service and deprived the Claimant of the opportunity to perform this work. Carrier File No. 1213662.

General Chairman's File No. UPGCW-LL92-13003. BRS File Case No. 11469-UP.

CLAIM C

Claim on behalf of J. M. Piniak for payment of 15 hours at the time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly Rule 13 when on September 1, 2, 8, 9, 13, and 15, 1999 it allowed a junior employee to perform overtime service and deprived the Claimant of the opportunity to perform this work. Carrier File No. 1213662. General Chairman's File No. UPGCW-LL92-13004. BRS File Case No. 11469-UP.

CLAIM D

Claim on behalf of J. M. Piniak for payment of 36 hours and 30 minutes at the time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly Rule 13 when on September 16, 17, 20, 23, 24, 27, 28, and 30, 1999 it allowed a junior employee to perform overtime service and deprived the Claimant of the opportunity to perform this work. Carrier File No. 1213662. General Chairman's File No. UPGCW-UP LL92-13005. BRS Case File No. 11469-UP.

CLAIM E

Claim on behalf of J. M. Piniak for payment of 26 hours and 30 minutes at the time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly Rule 13 when on October 1, 4, 5, 6, 7, and 11, 1999 it allowed a junior employee to perform overtime service and deprived the Claimant of the opportunity to perform this work. Carrier File No. 1213662. General Chairman's File No. UPGCW-UP LL92- 13006. BRS Case File No. 11469-UP."

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.

On all relevant dates herein the Claimant was serving as the Signal Foreman of a gang and, as such, was responsible for ensuring that the gang performed the work to which it was assigned. On those same days, he was instructed by his supervisors to assign members of his gang, one of whom was junior to the Claimant, to overtime work following a fiber optics contractor. The Claimant did not work during those same hours along with his gang because the nature of the gang's work during those hours did not require oversight of a Signal Foreman.

The Organization alleges that by failing to assign the Claimant, as the more senior employee, to the work in question the Carrier violated Rule 13 – OVERTIME (Subject to Hours of Service Act) that provides, in relevant part, "Where gang men are required to work overtime, the senior man in a class in the gang will be given preference to such overtime work."

We disagree. It cannot be ignored that although the Claimant was in fact senior to the employee who performed the overtime work, the nature of the work in question was not that which is required of the Claimant as the Signal Foreman. Therefore, he has no claim to the work that was performed. Moreover, because the work in question was not of the type ordinarily required of the Claimant and, because the Claimant chose not to report to perform those duties, he did not work and, as such, he was not entitled to compensation on any other basis.

Form 1
Page 4

Award No. 36842
Docket No. SG-36494
04-3-00-3-714

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 28th day of January 2004.