

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36860
Docket No. SG-36356
04-3-00-3-596

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

Claim on behalf of W. C. Williams for payment of 39 hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 14, when on June 26, 27, and 28, 1999 it allowed a junior employee to work overtime service and deprived the Claimant of the opportunity to perform this work. Carrier File No. 15 (99-0198). BRS File Case No. 11394-B&O.”

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.

The Organization filed claim on July 24, 1999 alleging violation of Rule 14(g) of the Agreement, which states:

“When overtime service is required of part of a gang or group of employees, the senior employees of the class involved, who are available, shall have preference of such overtime if they so desire.”

The Organization maintains that the Claimant was run around when overtime was worked by a junior Signalman on June 26, 27 and 28, 1999.

The Carrier denies any violation of the Agreement. It maintains that an attempt to call the Claimant was made prior to calling the junior employee. Because the Claimant was not available, the opportunity to work the weekend overtime went to the next employee in seniority order who accepted the assignment.

It is basic to any claim that the Organization provide substantial evidence to support its burden of proof. The Claimant's letter states in part that:

“... I was called by Mr. Wagner of Signals in Jacksonville, Florida to locate our warwagon, as it is the only vehicle that can pull backhoe & boring crew trailers legally in the state of Maryland. I missed that call by a few minutes. I tried to call back but got no answer. They called another teammate Terry Salmons and found the location of the truck. Shortly after this call he received a call from our foreman on 7XF5 Tom Sangfour asking him to work the weekend. . . . The reason I feel that I was passed over is Mr. Sangfour requested my phone number on Friday, July 2, 1999 stating he had misplaced my phone number.” (Emphasis added)

While there is clear speculation that a misplaced phone number demonstrates a failure to call, that is not proof of a Rule violation. Further, the Claimant tries to differentiate two types of calls. He argues that the first call was to find the location of the truck. That call was made by Wagner and the Claimant acknowledge that he missed that call, but asserts that it was not for overtime. The second call which was

made to the junior employee came from Sangfour and it was the call for overtime to find a Signaller who could drive the truck. Sangfour did not call the Claimant.

The Board finds no proof for this argument. There is no proof in this record that the two calls were for different purposes. There is no proof in this record that the call to the Claimant was only to find the location of the truck and not to ask him to perform the overtime.

The Board finds that the Claimant was called to perform overtime service and, by his own admission, “. . . missed the call by a few minutes. . . .” Under the Rule, senior employees “who are available” obtain the overtime if they desire. The Claimant was not available, because he missed the call. Certainly, the Carrier called the Claimant when overtime was needed. Accordingly, there is no proof that the Carrier ran around the Claimant and called only the junior employee, ignoring the Claimant’s seniority rights. Therefore, the claim is denied.

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.