

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37019
Docket No. SG-37012
04-3-01-3-601

The Third Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

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

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company:

Claim on behalf of J. M. O'Connor and J. G. Keith for payment of 7 hours each at the time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly Rules 13, 15, 16, and 80, when on July 29, 2000, Carrier allowed a signal inspector and lead signalman to perform overtime work on switches and related facilities at or around MP 245 and MP 253 on the Nebraska Division. This action deprived the Claimant of the opportunity to perform this work. Carrier's File No. 1247792. General Chairman's File No. N13 15 16-107. BRS File Case No. 11769-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.

The claim is about who stood for overtime work on a Signal Maintainer's territory on Saturday, July 29, 2000. The Organization agrees that the overtime work normally goes to the incumbent of the position if he or she is available. The relevant provision in Rule 16 A states, "Unless registered absent, the regular assignee will be called, except when unavailable due to rest requirements. . . ." The problem arose because the regular employee was taken off of the position on July 14, 2000, creating a vacancy. While the vacancy was bulletined, the position was filled on a temporary basis by Relief Maintainer S. D. Dewey.

What is strange about this case is that the Organization did not dispute the Carrier's right to require Relief Maintainer Dewey to fill the position during the week as he normally is used to fill in on Maintainer vacancies. It did not offer the name of someone else who it asserts should have been used. Usually, when an employee is used to relieve on a regular position, he takes the conditions of the job, including the right to work the overtime normally flowing to that position. There is no precedent for the claim in this case, which is that the adjacent Maintainers have a demand right to overtime on an adjoining territory ahead of the incumbent of the temporary vacancy.

The governing second paragraph of Rule 26 required the Carrier to fill the temporary vacancy pending the tolling of the bidding process because the vacancy exceeded one week in duration. The Organization does not explain how its claim that Relief Maintainer Dewey was not considered a Relief Maintainer in the eyes of the Organization has an impact on the validity of an off-day overtime claim. While the Carrier denied the Organization's assertion, the Rule also says that the vacancy may be filled by "the senior qualified employee of Class 1 assigned to the Signal or Maintenance Gang." We have to assume that the Claimant was such a person because there is no claim on behalf of anyone else for the weekday dates.

The record does not provide a rationale to justify a finding that the Carrier violated the Agreement and the Board must deny the claim.

**Form 1
Page 3**

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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 May 2004.