

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37100
Docket No. SG-37014
04-3-01-3-619

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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. H. Spiegel for payment of six hours at the time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly Rule 15, when on September 2, 2000, Carrier allowed a junior employee to perform overtime work on the Albert Lee Subdivision. This action deprived the Claimant of the opportunity to perform this work. Carrier's File No. 1246998. General Chairman's File No. N13-112. BRS File No. 11814-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 dispute focuses on who stood for overtime work on a Signal Maintainer's territory for a trouble call that required immediate attention. There is no Agreement provision that restricts the Carrier's choice of people who can be called to meet this immediate need when the incumbent, who is called the assignee, is not available. The relevant provision in Rule 16A states, "Unless registered absent, the regular assignee will be called, except when unavailable due to rest requirements. . . ." The Rule goes no further. The Carrier contends that it did attempt to contact the two adjoining Maintainers, which both parties agree is the customary next step. Seniority is not a governing requirement at this point. The adjoining Maintainers are the next logical choice. However, they were unavailable. The dispute is about what to do next. Third Division Award 35639 rejected the Organization's position and held that management has the prerogative to choose who will be called.

The Organization's burden of proof is to show that the labor contract contains language that justifies the claim that the Carrier is deprived of the right to use its discretion in calling someone to fix the trouble. There is no such language. The Organization did not prove that the Carrier violated the Agreement.

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 21st day of July 2004.