

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37123
Docket No. SG-37520
04-3-02-3-617

The Third Division consisted of the regular members and in addition Referee Nancy F. Eischen 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, Inc. (CSXT):

Claim on behalf of R. E. Prevo, for 137 hours at his time and one-half rate of pay, \$297.28 in expenses and eight days of travel time at 30 minutes each, and continuing until this dispute is resolved, account Carrier violated the current Signalmen's Agreement, particularly Rule 14, when it used a junior employee instead of the Claimant on various dates beginning with the week ending July 6, 2001, and continuing through the week ending August 3, 2001, on the Chicago Division from Nova, Ohio, to Warwick, Ohio, and deprived the Claimant of the opportunity to perform this work. Carrier's File No. 15(00-0190). General Chairman's File No. SSCG-2-1 1 -01. BRS File Case No. 12189-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 record in this case shows that the Claimant was assigned to System Signal Construction Gang No. 7XA9 as a Leading Signalman, working ten-hour days Monday through Thursday, with Friday, Saturday and Sunday rest days. On Thursday, June 28, 2001, a day when the Claimant was on vacation, the Carrier canvassed that gang in seniority order for preference of an overtime assignment working with Maintenance of Way tie and surfacing units on the Chicago Division on the gang's off cycle. Signalman J. R. Pittenger, an employee junior to the Claimant, was the senior available employee who expressed interest and he was assigned. Signalman Pittenger reported for this assignment on Sunday, July 1, 2001 and worked that job from Nova, Ohio, to Warwick, Ohio, (M.P.B.G. 140 to B.G. 200) until mid-August 2001.

When the Claimant returned to work on July 2, 2001 and learned of Signalman Pittenger's assignment, he requested that the Carrier remove the junior employee and assign him instead to the overtime assignment. When the Signal Foreman denied that request, Leading Signalman Prevo initiated the present claim, alleging a violation of Rule 14 (g) and seeking as remedial damages the earnings of the overtime assignment, plus "expenses" and "travel time." The Carrier denied the claim on grounds that the Claimant was not "available" on June 28, 2001 and had no right to dislodge the employee otherwise properly assigned. It is the Organization's contention that just because the Claimant was on vacation on June 28, 2001 and did not have an opportunity to accept or reject the work assignment until his return to work on Monday, July 2, 2001, does not overcome his seniority entitlement to be assigned when he did make the request.

This claim is defeated by the plain and unambiguous language of Rule 14(g) which provides: "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 plain meaning of that language is that seniority entitlement to overtime assignments is conditioned on availability at

the time when the overtime service begins, not days or weeks after the assignment has been made. An employee who is on vacation is by definition not available for work. Rule 14 (g) cannot reasonably be read to give a more senior employee who was not available on the day the assignment was made the right to dislodge an employee who was both senior and available on the day the assignment was made. We conclude that neither the appointment of Signalman Pittenger on June 28, 2001 to the overtime assignment which began July 1, 2001, nor the Carrier's refusal to replace him with Leading Signalman Prevo on and after July 2, 2001, violated the Claimant's rights under Rule 14 (g).

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 25th day of August 2004.