

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37176
Docket No. SG-37669
04-3-03-3-14

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Amtrak (NRPC):

Claim on behalf of W. Davies, for four hours at his time and one-half rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Appendix B-3 and B-4, when it called a junior man and failed to call the Claimant to fill a vacancy on the Third Trick Trouble Truck out of the Morrisville Signal Shop on September 20, 2001 from 11:00 p.m. to 6:00 a.m., causing a missed work opportunity for the Claimant. Carrier's File No. NEC-BRS(S)-SD-947. General Chairman's File No. JY 321088-102022. BRS File Case No. 12472-NRPC(S)."

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 reflects that on September 20, 2001, an employee with less seniority than the Claimant was called to fill a vacancy on the third shift. The Organization filed a claim on the Claimant's behalf. The Carrier agreed that the Claimant was not called and compensated the Claimant for a minimum call of three hours at the overtime rate. The claim seeks compensation for the entire seven hours of overtime that were worked by the junior employee. However, the record further reflects that if the Claimant had worked more than four hours of overtime, he would not have been able to work his entire regular shift because of the Hours of Service Act. Therefore, we shall require the Carrier to compensate the Claimant, but only for one additional hour of overtime beyond the three hours that the Carrier has already paid the Claimant, because that is the maximum amount of time he would have been able to work under the Hours of Service Act.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of September 2004.