

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37291
Docket No. SG-36913
04-3-01-3-497

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(The Burlington Northern and Santa Fe Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe Railroad Co. (former Santa Fe Railroad):

Claim on behalf of C. M. Haddad for payment of 4 hours at the time and one-half rate. Account Carrier violated the current Signalmen's Agreement, particularly Rule 12(c), when Carrier used junior employees to repair a meter pole at Highway 95 in Duson, Louisiana. Carrier's action deprived the Claimant of the opportunity to perform this work. Carrier's File No. 35-00-0015. General Chairman's File No. 002012. BRS File Case No. 11735-ATSF).”

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 Claimant was assigned to the position of Signalman on Signal Gang 15314 on the Texas Division. On the day in question a Signal Maintainer was working overtime repairing a meter pole when it became apparent that he needed assistance from another employee. The Signal Maintainer's supervisor instructed the Signal Maintainer to contact another employee from the gang and the Signal Maintainer did so, contacting an employee who was less senior than the Claimant who then performed the work. The Claimant then filed the instant claim alleging that as the more senior employee he should have been assigned the overtime work in question.

Because the claim raises a matter of contract interpretation the burden of proof is of course on the Organization. We find that it has not met its burden of proof because the record is unclear whether the Claimant was available to perform the work in question had he been called to do so. Because the record does not permit us to make such a finding, and because the Board should not engage in speculation or make presumptions that are not established in fact, the claim must be 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 17th day of November 2004.