

****CORRECTED****

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37636
Docket No. SG-38094
05-3-03-3-546**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien 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:

Claim on behalf of M. J. Hymel, for 12 hours at the overtime rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Rule 16 and Note 2, when on Saturday, September 21, 2002, Carrier allowed a junior signal maintainer to work between CPH 381 and CHP 378, on the Beaumont Sub in Houston, Texas, following a tie gang instead of calling and using the Claimant who was senior and available to perform the work. Carrier's actions deprived the Claimant of the opportunity to perform this work. Carrier's File No. 1343906. General Chairman's File NO. S-16-345. BRS File Case No. 12803-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.

On Saturday, September 21, 2002, a Track Tie Gang was working on the Beaumont Subdivision in Houston, Texas. When a Track Tie Gang is working, the Carrier requires a signal employee to be available to perform any work required on its signal system. On September 21, 2002, Signal Maintainer A. H. Swinhoe worked 12 hours of overtime following the Track Tie Gang on the Beaumont Subdivision.

On October 9, 2002, the Organization filed a claim on behalf of M. J. Hymel for 12 hours' pay at the overtime rate for Sunday, September 22, 2002. There is no question that the Claimant is senior to Signal Maintainer Swinhoe. The Organization contends that the Claimant should have been offered the overtime following the Track Tie Gang because he was senior to Signal Maintainer Swinhoe who was offered the overtime.

The Carrier denied the claim contending that M. J. Hymel was not available for overtime working with the Track Tie Gang on the Beaumont Subdivision on September 21, 2002, because he worked ten hours of overtime on September 21 working on Signal Gang No. 2658.

The Organization submitted an undated, internal Brotherhood of Railroad Signalmen letter, which purportedly demonstrates that its Local Chairman and local management at Houston bilaterally agreed to establish a call list. The Carrier denied that any such call list had been established at Houston.

If the Organization's Local Chairman and Union Pacific local management at Houston did agree to establish a call list, they evidently did not memorialize this understanding in writing because there is no signed document in the record before the Board reflecting such an understanding. And in any event, the purported agreement submitted by the Organization specifically refers to overtime in the Houston Terminal Yard. The overtime in dispute was performed on the Beaumont Subdivision, not in the Houston Terminal Yard. Therefore, that reputed understanding would be inapposite to this overtime. Moreover, even if the alleged

understanding did apply to this overtime, there was no violation because the Claimant was not available for this overtime. It is undisputed that he worked ten hours of overtime on Saturday, September 21, 2002, working with Signal Gang No. 2658. For all these reasons, the claim is 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 19th day of October 2005.