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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38005
Docket No. SG-37806
06-3-03-3-169

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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 (UP):

Claim on behalf of N. J. Scarsone, for 12 hours at his overtime rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Rule 16, when it failed to call the Claimant, as the next maintainer to be called from the call list for the territory encompassing MP 21.4, on February 16, 2002, and called another employee, depriving the Claimant of the opportunity to perform this work.” Carrier's File No. 1311485. General Chairman's File No. S-16-261. BRS File Case No. 12477-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 claim listed above was originally filed on March 15, 2002. The Organization alleged that the incumbent of the territory was unavailable along with the next two Maintainers on the call list. According to the Organization, the Claimant was the next available Maintainer that could have taken the call. It noted that the man called, Dardenne, was not even on the call list. In support of its claim the Organization cited Rule 16, Note 2, which reads as follows:

"The Local Chairmen and Local Management may agree to establish lists other means in which to determine which employees are to be called under this rule, subject to review by the General Chairman and Labor Relations."

The Carrier denied the claim by letter dated May 13, 2002. It insisted that Rule 16 states: "... unless registered absent, the regular assignee will be called ..." and should that employee not respond or be unavailable, the Carrier may send any alternate available to respond. It further contended that the "call list" mentioned was only a suggested guideline and in no way restricted the Carrier to calling only those listed and in any particular order.

By letter dated May 22, 2002, the Organization appealed the Carrier's denial. It reiterated that Note 2 to Rule 16 was controlling in this matter, and asserted that the purpose of the call list was clear, i.e., it was to be used by the Carrier when determining whom to call when an incumbent was unavailable for overtime. The Organization attached to its appeal a list of employees which it asserted was the call list referred to in Note 2 to Rule 16.

The Carrier denied the Organization's appeal on July 19, 2002. The carrier noted that the regular Maintainer was unavailable to take the overtime call. It asserted that there was no specific language in the Agreement requiring it to call other employees in seniority order if the incumbent was unavailable.

The Board reviewed the evidence of record in this case. There is no discussion in this record regarding whether the work at issue constituted an emergency. If it were an emergency, and if there were a clear call list of employees, which "the Local Chairmen and Local Management" had agreed to establish, then the provision of Note 2 to Rule 16 would likely be applicable in this case. However, in addition to no clarity on the nature of the overtime at issue, the list provided by

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the Organization lacks clarity or purpose. Accordingly, the Board finds no factual basis upon which to sustain the claim.

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 October 2006.