

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 38098
Docket No. SG-37864
07-3-03-3-244**

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 A. F. Straub, for three hours at the overtime rate account Carrier violated the current Signalmen’s Agreement, particularly Rule 16, when on February 21, 2002, it called a junior employee for an overtime call instead of calling the Claimant who was senior and available to take the call. Carrier’s File No. 1317901. General Chairman’s File No. S-16-287. BRS File Case No. 12665-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 essential facts of this case are not in dispute. On February 21, 2002 the Carrier had a report of a switch out of adjustment at Mile Post 342.0 on the Hoxie Subdivision. The Carrier made a call to the Claimant at or about 4:46 P.M., but the Claimant did not answer, and the Carrier left a message. At 5:25 P.M. the Carrier dispatched Signal Maintainer R. Ericson to the site to perform the repair. At approximately 5:50 P.M. the Claimant picked up his messages and called the Carrier, at which time he was informed that another person had been assigned to the work in his stead.

The Organization filed a claim on April 22, 2002. It alleged that the Carrier had violated Rule 16 – Subject to Call – of the Agreement. That Rule reads, in pertinent part, as follows:

“A. Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and will notify the person designated by the Management of their regular point of call. When such employees desire to leave such point of call for a period of time in excess of two (2) hours, they will notify the person designated by the management that they will be absent, about when they will return, and, when possible, where they may be found. Unless registered absent, the regular employee will be called, except when unavailable due to rest requirements under the Hours of Service Act, as amended by Public Law 94-348.”

Following the Carrier’s June 17 denial and the Organization’s July 16, 2002 appeal, the Carrier again denied the claim in a letter dated September 4, 2002. Therein the Carrier contended that it had called the Claimant in accordance with Rule 16, but that the Claimant had failed to respond to the call within a reasonable amount of time. Thus, the Carrier asserted, it was within its rights to contact the next available Signal Maintainer for the call. It disputed the Organization’s claim that the Claimant was entitled to three hours’ overtime under the circumstances.

The Board carefully reviewed the evidence presented in this case. We do not find that the Carrier was unreasonably hasty in moving on to the next available employee when the Claimant failed to respond to his call for more than one hour.

The language of Rule 16 provides for the process by which employees may indicate their availability for overtime. It also mandates that the Carrier will first call the regular assignee unless he or she is registered absent or unavailable under the Hours of Service Act. Nothing in Rule 16 obligates that the Carrier to wait an excessive amount of time for a response from a called employee before calling the next available employee.

Under the circumstances of the present case, the Board finds no evidence to support the Organization's position. Accordingly the instant claim is denied in its entirety.

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 21st day of February 2007.