

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38945
Docket No. SG-38646
08-3-NRAB-00003-050029
(05-3-29)

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Massachusetts Bay Commuter Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Massachusetts Bay Railroad Company:

Claim on behalf of J. M. Barry, Jr., for 12 hours at the time and one-half rate of pay, account Carrier violated the current Signalman's Agreement, particularly the Planned Overtime Call List agreement, when it failed to call the Claimant who was available and senior to the employee used for an overtime assignment from 6:00 a.m. until 6:00 p.m. on November 1, 2003. Carrier's File No. MBCR-BRS-01/1204. General Chairman's File No. JY32101063-120041. BRS File Case No. 13073-MBCR.”

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.

This claim results from the Claimant's assertion that a junior employee was called to work planned overtime (buffing rail due to black rail) on Saturday, November 1, 2003 instead of the Claimant.

The facts in this case flow from the same conversation discussed in Third Division Award 38944 when the Claimant declined to work overtime. As this Board stated in that award:

"The record is confusing and in conflict. This Board cannot tell from the assertions made by the parties in the correspondence on the property precisely what the Claimant stated and intended when he refused overtime. Was he refusing overtime for a particular assignment (as the Organization asserts) or was he refusing overtime for a particular period (as the Carrier asserts)?

But the burden is on the Organization to prove the essential elements of its claim. From what is in this record - i.e., conflicting assertions which are subject to interpretation - we cannot sufficiently determine what the Claimant actually meant when he declined to work overtime. Most significantly, this Board has nothing from the Claimant concerning what he said when he refused overtime. A record with facts in conflict and leaving assertions subject to interpretation such as this leaves this Board with no choice but to conclude that the Organization has not carried its burden. The claim will be denied on that basis. Given that conclusion, the Carrier's argument that the overtime work was the result of an emergency is moot."

For the same reasons, this claim will be denied.

Form 1
Page 3

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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 29th day of February 2008.