

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39692
Docket No. SG-39266
09-3-NRAB-00003-060006
(06-3-6)

The Third Division consisted of the regular members and in addition Referee Joyce M. Klein 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 G. W. Ray, for seven hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 13, 15, 16 and 80, when it failed to call the Claimant for planned overtime service on September 19, 2004, on his assigned territory at the Deval Interlocking Plant in Des Plaines, Illinois. Carrier’s File No. 1414644. General Chairman’s File No. N 13 527. BRS File Case No. 13346-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 Claimant alleges that the Carrier failed to call him on September 19, 2004 to perform overtime work due to Maintenance of Way forces resurfacing road beds and performing rail changing operations. The claim was denied by the Carrier because the Claimant, of his own choosing, elected not to avail himself of the overtime opportunity. The Carrier contends that the Foreman offered planned overtime work to the Claimant, but he refused indicating that he had to attend a wedding. After following proper channels, the Foreman determined that there were no qualified available employees assigned to the territory where the overtime work was to be performed, so an employee who was the most senior readily available and qualified individual on his gang, who was assigned to the Harvard Subdivision, was afforded the planned overtime opportunity.

The Organization maintains that the Claimant had submitted a letter expressing that he was available for overtime calls and thus the Claimant should have been called for the overtime work.

The Carrier emphasizes that the planned overtime opportunity was offered to the Claimant who declined for personal reasons. The Carrier contends that due to an irreconcilable dispute in facts, the claim should be dismissed.

Whether the Claimant was entitled to the overtime turns on whether he was asked if he wanted to work the planned overtime and declined so he could attend a wedding or whether, as he states, he was available for overtime but was not called. When the Claimant's assertion of his availability is compared with the Carrier's assertion that the Claimant advised the Foreman of his personal plans, an irreconcilable dispute of the material facts necessary to resolve the claim arose. Under such circumstances, the Board has no choice but to dismiss the claim.

AWARD

Claim dismissed.

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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 26th day of May 2009.