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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40587
Docket No. SG-40600
10-3-NRAB-00003-080444**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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 R. J. Hansen, for three hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 16, when it used a junior employee instead of the Claimant on a trouble call at CP 214 on the Nampa Sub on March 3, 2007 and denied the Claimant the opportunity to perform this work. Carrier’s File No. 1474906. General Chairman’s File No. UPGCW-16-1454. BRS File Case No. 13993-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.

This claim protests the failure of the Carrier to call the Claimant for a trouble call on March 3, 2007 when the incumbent was unavailable, based upon his greater seniority than the Signal Maintainer called to perform this emergency overtime switch repair work. It relies upon the following Agreement language to support the Claimant's entitlement to the work assignment:

"RULE 16 - SUBJECT TO CALL

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 assignee will be called, except when unavailable due to rest requirements under the Hours of Service Act, as amended by Public Law 94-348.

* * *

Note 2: The Local Chairmen and Local Management may agree to establish lists or 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 Organization argues that seniority is the cornerstone of the Agreement and must have privilege, citing Third Division Awards 19758, 29536 and 33909. It asserts that the Claimant was not only senior to the Signal Maintainer called, but that he was available and closer to the trouble call, relying upon a written statement of the Claimant that although he works on a different territory, he lives two miles closer to any trouble call on this territory than the employee assigned. During the on-property correspondence the Organization alleged that the Supervisor refused to sit down with the Local Chairman to agree upon a call list, and queried why the

Carrier would care who is called as long as the senior employee is qualified and available to handle the trouble call.

The Carrier contends that Rule 16 obligates it to contact the regular assignee on the territory for a trouble call, but is silent regarding who may be called next if the regular employee is unavailable, leaving to the Carrier the ability to determine who is to be the alternate with due regard to operational requirements, citing numerous Awards including Third Division Awards 35639, 37100, 37218, 37635, 38094 and 39499. It notes there is no reference to seniority within Rule 16, and there was no agreed call list in this case. The Carrier points out that trouble calls are emergency situations, and it has no obligation to allow a dangerous condition to continue while it calls a senior Maintainer from a different territory. It stresses the employee assigned was available and from the same territory, and there is no proof that the Claimant was closer to the trouble call than the employee assigned. The Carrier distinguishes the cases relied upon by the Organization by noting that all three Awards do not raise the issue of the unavailability of the assigned Maintainer, Third Division Awards 30833 and 33909 deal with the assignment of an employee from the same territory (as was the case herein) and Third Division Award 30952 was not a trouble call. The Carrier argues the Organization failed to sustain its burden of proving a violation of the Agreement.

A careful review of the record convinces the Board that the Organization has not met its burden of establishing a violation of the Agreement in this case. Unlike many of the cited cases, this case involves a trouble call that required immediate action, which makes Article 16A applicable. The clear language of that provision, and many on-property Awards interpreting it, establishes that the Carrier is obligated to call the regular assignee or incumbent to the position unless he is registered absent or is unavailable due to rest requirements under the Hours of Service Act. Absent an agreed call list, there is no further restriction on the Carrier's choice of people who can be called to meet the immediate need when the incumbent is unavailable. Seniority is not a governing requirement in this Rule once the Carrier has fulfilled its responsibility to the incumbent. See, Third Division Awards 37100 and 37218. Because there is no agreed call list in this case, management has the prerogative to choose who will be called once the incumbent is found to be unavailable. The Organization has not shown that the Carrier violated

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the Agreement by failing to call the Claimant from a different territory for the trouble call in issue.

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 27th day of August 2010.