

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40588
Docket No. SG-40602
10-3-NRAB-00003-080450**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 S. A. Smith, for 10 hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 13, 16 and 80, when it used a junior employee instead of the Claimant for overtime service on the Claimant’s alternate territory near MP 57 on April 8, 2007, and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 1475490. General Chairman’s File No. N 16 682. BRS File Case No. 13945 -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 April 8, 2007 as the result of a derailment near Mile Post 57, when the incumbent (Namuth) was unavailable due to Hours of Service restrictions. The junior employee called was a Relief Maintainer for the territory; the Claimant was a Signal Maintainer on an adjacent territory between Mile Posts 9 and 40. 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."

On the property, the Organization asserted that the Claimant was available, and was entitled to the overtime assignment as the regular assignee by virtue of his position as second alternate on the established call list (while the Relief Maintainer called was not on such list) or by virtue of his superior seniority. The Carrier's August 13, 2007 denial challenged the proposition that the Claimant was the regular assignee, because Namuth was the incumbent to the position between Mile Posts 40

and 67, as well as the existence of an agreed call list, indicating that the list included with the claim was not negotiated with the Organization and was solely a management tool used to assist the Department in contacting the proper Maintainers for trouble calls during off duty hours. Attached to the Organization's October 25, 2007 appeal in support of its contention that this was a Rule 16 call list prepared by both parties is an email dated June 28, 2005 from DSM Hauser regarding call sheets and alternates. The substance of the email confirms that Maintainers, and not support personnel, should be doing this work except in critical situations, and directs each manager to consult with his respective Local Chairman to review and discuss the call lists they prepared and to resolve any issues that may be raised. The Carrier does not address the substance of this email on the property or explain why the call list submitted with the claim is not encompassed within such instruction. However, the Carrier did explain that the reason the Claimant was not selected in this case was because, with Namuth unavailable in a derailment situation, it wanted to assure adequate trouble call coverage by the Claimant on a significant part of two territories (between Mile Posts 9 and 67) and the Relief Maintainer was qualified to respond to the derailment. The Carrier stressed the emergency nature of the situation involved.

The Organization argues that seniority is the cornerstone of the Agreement and must have privilege, citing Third Division Awards 19758, 29536 and 33909. It contends that the Carrier failed to prove its affirmative defense of an emergency situation, positing that the derailment was no longer an emergency at the time of this trouble call, relying on Third Division Awards, 15444, 18447 and 20107. The Organization asserts that there was an agreed upon call list under Rule 16 designating alternates to be called if the incumbent is unavailable for a trouble call on his territory, and that the Claimant was on that list while the junior Relief Maintainer given the work was not, thereby establishing his superior right to the disputed work or compensation for the overtime opportunity missed.

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 37100 and 37218. It notes that there is no reference to seniority within Rule 16, and argues that there was no

agreed call list negotiated and signed by the parties in this case, but merely an internal worksheet used by management for contacting Maintainers for trouble calls, relying on Third Division Awards 37635, 37636 and 37894. The Carrier points out that the derailment and damage to track structure and signals in this case caused an emergency situation, which gives it particular flexibility and latitude to utilize its forces as it determines appropriate, citing Third Division Awards 20527 and 10965, as well as Second Division Award 8093. Under these circumstances, the Carrier argues that 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 for the following reasons. First, the finding that seniority is not a governing requirement in the application of Rule 16A once the Carrier has fulfilled its responsibility to the incumbent set forth in Third Division Award 40587 is equally applicable herein. Second, there is a dispute of material fact with respect to the existence of a call list applicable to the facts of this case. The document identified as such and attached to the claim is not so designated, is not signed, and there is no evidence that it was specifically subject to negotiation or discussion with the Organization leading to some type of agreement. See Third Division Awards 37635 and 37636. Neither is there proof of an agreed prior practice as existed in Third Division Award 37894. Third, even if we were to accept the existence of a call list on the basis of the Carrier's failure to rebut the email evidence submitted by the Organization, there is no basis to contest the Carrier's assertion of an emergency situation caused by the undisputed derailment. As noted, in such situations the Carrier is permitted a wide degree of latitude in making decisions concerning how best to utilize its forces. See Third Division Awards 10527, 36026 and 39499. The Carrier's explanation for not calling the Claimant to perform this work at Mile Post 57 cannot be found to be unreasonable, arbitrary, or unrelated to valid operational objectives. For all of these reasons, the claim must fail.

AWARD

Claim denied.

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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 27th day of August 2010.