

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40589
Docket No. SG-40603
10-3-NRAB-00003-080451**

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 S. A. Smith, for 12 hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 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 7, 2007, and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 1475491. General Chairman’s File No. N 16 683. BRS File Case No. 13944 -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 7, 2007 commencing at 1:00 P.M. as the result of a derailment near Mile Post 57, when the incumbent (Namuth) was unavailable due to Hours of Service Act restrictions. The Maintainer utilized was not an assignee of the territory; the Claimant was a Signal Maintainer on an adjacent territory between Mile Posts 9 and 40. It deals with the same Claimant, a previous day, and substantially similar allegations as were raised in Third Division Award 40588. This claim also relies upon the language of Rule 16A and Note 2 of the Agreement, and with the exception of the seniority argument raised in the prior case, the correspondence and positions raised on the property are nearly identical. For this reason, we adopt our discussion of the record and arguments made by the parties in Third Division Award 40588 herein.

A careful review of the record convinces the Board that there are two areas of disagreement underlying this claim. First, the overtime work involved was of an emergency nature, and, second, the call list was agreed to by the parties and enforceable under Note 2 to Rule 16. It is the Organization's burden to establish the facts underlying the alleged violation of the Agreement. In this case the Board is unable to find that the Organization met its burden. There appears to be a dispute of material fact with respect to the existence of a call list in 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. The fact there was an email directive written almost two years prior for Local Managers to meet with Local Chairmen to deal with call sheets and alternatives in an effort to assure that Maintainers are used to handle trouble calls, not support personnel including Inspectors, Technicians and Foremen, is insufficient to transform the disputed list into an agreement between the parties concerning the order of call as between Maintainers. There is no direct evidence linking this list to such discussions. 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, the Organization provided no valid basis upon which to contest the Carrier's contention that an emergency situation existed as a result of the undisputed derailment. Assertions are insufficient to meet the Organization's

burden of proof in this regard. As noted, in emergency 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. We adopt the finding of the Board in Third Division Award 40588 that the Carrier's explanation for not calling the Claimant to perform this work at Mile Post 57 is not unreasonable, arbitrary, or unrelated to valid operational objectives. For all of these reasons, this claim must also fail.

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.