

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40611
Docket No. SG-40922
10-3-NRAB-00003-090230**

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. P. Carroll, for 10 hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 16, 40 and 80, when it failed to utilize the agreed upon ‘Call List’ to call Claimant for overtime service on January 6, 2008, and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 1493819. General Chairman’s File No. UPGCW-16-1522. BRS File Case No. 14147-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 signal failure on January 6, 2008 at Mile Post 384 when the incumbent was unavailable, based upon an agreed call list. 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 relies upon the written statements of the Claimant, as well as the discussion at the claims conference, to establish that there was an agreed call list in place covering Manager Braden's district, which provided that if a Maintainer from Elko was used for a trouble call, the Claimant would take all calls on west bound No. 1 track (Old Southern Pacific lines) and Maintainer Cox would take all calls on east bound No. 2 track (Old Union Pacific lines). It asserts that on the claim date Cox was called ahead of the Claimant at Mile Post 384.0 on No. 1 track by the Signal Operations Center (SOC) and later worked on another call at Mile Post 321.0 as a result of a call from Manager Braden, for a total of 17.5 hours,

while the Claimant was available, but only worked for 7.5 hours on Cox's district. It notes that this claim seeks only the ten hour difference. When the existence of this alleged call list was questioned, the General Chairman set forth what he was told by Manager Braden in his August 27, 2008 post-conference appeal. The Claimant submitted another statement confirming the alleged call list, as well as the fact that Braden refused to put it in writing and send it to the SOC, but wanted them to call him on each occasion, which worked perfectly when Braden was present. The Claimant indicated that he refused Braden's offer of three hours of compensation for this assignment because he felt he was entitled to the entire ten hours' difference.

The Carrier initially stated only that Rule 16 obligates it to contact the regular assignee on the territory for a trouble call (which was neither the Claimant nor Cox) 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. Later in its April 21, 2008 denial, the Carrier noted that the call list referred to by the Organization covers the Nevada Subdivision where Mile Post 384.0 is located, and shows that Glover was the regular assignee and that the Claimant was not even on that list. It attached a list containing the names of various Maintainers on different gangs assigned to the Nevada Subdivision, their primary work locations and the order of alternates; neither Claimant nor Cox appear on this list. The Carrier asserts that the Organization failed to prove that the Claimant had a priority right to this overtime assignment.

A careful review of the record convinces the Board that the Organization failed to meet its burden to prove a violation of the Agreement in this case. It is the Organization's burden to establish the facts underlying the alleged violation of the Agreement. In this case there appears to be a dispute of material fact with respect to the contents of the applicable call list. While the Claimant and the General Chairman each submitted written accounts of the arrangement by which trouble calls would be handled by Maintainers from Elko on Manager Braden's territory, they each admitted that there was no written list submitted to the SOC and there was no independent verification of an alleged understanding by either Cox or Braden. On the other hand, the Carrier submitted what it contended was the applicable call list for Mile Post 384.0 where one of the trouble calls in issue occurred, and neither the Claimant nor Cox appeared on it. It is undisputed that

the assignments in issue went to Cox, rather than the other alternates listed on this call list. Thus, it appears that the action of calling Cox for this trouble call was inconsistent with either alleged call list. In these circumstances, it appears that there is an irreconcilable dispute of material fact preventing the Board from determining which call list would be applicable or enforceable in this case. Accordingly, we conclude that the Organization failed to carry its burden of proof.

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.