

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40612
Docket No. SG-40963
10-3-NRAB-00003-090303**

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 D. L. Lewis, for three hours and fifteen minutes at his time and one-half rate of pay, account Carrier violated the current Signmalmen’s Agreement, particularly Rules 16, 40 and 80, when it used a junior employee instead of the Claimant on a trouble call at the 4th street crossing, milepost 384.7 at LeRoy, Kansas, on the Coffeyville Sub on February 10, 2008, and denied the Claimant the opportunity to perform this work. Carrier’s File No. 1496206. General Chairman’s File No. UPGCW-40-1528. BRS File Case No. 14145-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 February 10, 2008 at the 4th street crossing in LeRoy, Kansas, when the regular assignee (Shawn Bonham) was unavailable, and the selection of a junior employee to perform the overtime required to repair the malfunctioning gate. It relies upon Rule 40 (Seniority) as well as 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 and is to be used in making overtime assignments, citing Third Division Awards 30833 and 33909. Because the Claimant was senior to the Signal Maintainer called, was available and closer to the trouble call, the Organization questions why the Carrier would care who is called as long as the

senior employee is qualified and available to handle the trouble call, as he was in this case.

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 flexibility to determine who is best able to respond. It notes that there is no reference to seniority within Rule 16, and there was no agreed upon call list in this case. The Carrier points out that (1) trouble calls are emergency situations (2) it has no obligation to allow a dangerous condition to continue while it calls a senior Maintainer from a different territory and (3) in such situations, it has latitude to assign whoever it deems appropriate without restriction from the Agreement, citing Third Division Award 20527 and Second Division Award 8093. The Carrier emphasizes that, in this case, it was determined that the Claimant was unavailable to take trouble calls over the weekend based upon his response to his Manager's inquiry on February 9, 2008 that he would "be in and out" all weekend.

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. As was the situation in Third Division Award 40587 this case involves a trouble call that required immediate action, which is governed by the clear language of Article 16A establishing that the Carrier is only obligated to call the regular assignee to the position unless he is registered absent or is unavailable due to rest requirements under the Hours of Service Act. Absent an agreed upon 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 regular assignee is unavailable, as he was in this case. Seniority is not a governing requirement in this Rule once the Carrier has fulfilled its responsibility to the regular assignee. See Third Division Awards 37100 and 37218. Because there was no agreed upon call list and the regular assignee was unavailable, management had the prerogative to choose who would be called. The Board need not consider whether the Claimant was available to take the trouble call in issue, because the Organization failed to show that the Claimant had a priority right to this overtime assignment, or that the Carrier violated the Agreement by failing to call the Claimant from a different territory for the trouble call in issue.

Form 1
Page 4

Award No. 40612
Docket No. SG-40963
10-3-NRAB-00003-090303

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.