

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40613
Docket No. SG-41000
10-3-NRAB-00003-090333**

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 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 used a junior employee instead of the Claimant on a trouble call on a hot box detector at Milepost 411.0 on the Coffeyville Sub on March 8, 2008, and denied the Claimant the opportunity to perform this work. Carrier’s File No. 1498385. General Chairman’s File No. UPGCW-16-1534. BRS File Case No. 14146-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 involving a malfunctioning hot box detector on March 8, 2008, when the regular assignee to the territory (Shawn Bonham) was unavailable, and the selection of junior employee Jeff Shaw, a Maintainer on the adjacent territory, to perform the overtime involved. 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 governs in determining preference to overtime work, citing Third Division Awards 30833 and 33909. Because the Claimant was senior to the Signal Maintainer who was called and he was available and closer to the trouble call, the Organization asserts that he was entitled to be called prior to Shaw who was also not assigned to the territory, even if it was an emergency situation.

The Carrier contends that it complied with Rule 16, which only 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 it the flexibility to determine who is best able to respond to this emergency situation. It notes that there is no reference to seniority within Rule 16, there was no agreed upon call list in this case, and the assignment was made in conformance with the historical practice on this territory, i.e., to use the Maintainer of the adjoining territory to cover trouble calls when the regular employee has checked out.

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. This case is almost identical to the situation presented in Third Division Award 40612, involving the same regular assignee, junior employee called for the assignment, and the Claimant, as well as the same contentions of the parties. We adopt the rationale set forth in that case in holding that the Organization failed to prove 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. Accordingly, the claim is denied.

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.