

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40619
Docket No. SG-38673
10-3-NRAB-00003-050093
(05-3-93)**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp.:

Claim on behalf of J. G. Thomas III, for eight hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Appendix B-4, when it called a junior man on the altered call out list and failed to call the Claimant for a trouble call on August 7, 2003, causing a missed work opportunity for the Claimant. Carrier’s File No. NEC-BRS(S)-SD-1029. General Chairman’s File No. JY32101070-18043. BRS File Case No. 13075-NRPC(S).”

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 involves the application of calling procedures under Appendix B-4. It is the second companion claim involving Claimant J. G. Thomas, III. (See Third Division Awards 40618 and 40620). In this instance, the Claimant was not called out to respond to a fire alarm failure on August 7, 2003 at the 30th Street Station. Instead, Electronic Technician H. Campbell, who was a member of Division Construction Gang R-961, was called out and performed the overtime.

The Organization alleges that the Carrier violated Appendix B-4, when the Claimant was placed improperly on the call out list and denied his right to perform service for the trouble call.

The Carrier insists that it complied with the proper calling procedures when it placed Campbell ahead of the Claimant. The Rule argued in these companion claims is Appendix B-4, which states, in pertinent part:

“Procedure for Calling C&S Department employees for trouble involving Maintainer’s work outside their regular working hours.

1. Subject to other provisions of this Agreement, a calling arrangement will be established by the Assistant Engineer C&S/ET and the Organization’s designated representative jointly.

(a) The calling agreement will be subject to the concurrence of the General Chairman and the Director-Labor Relations.”

The procedure for calling out employees is argued by the Carrier to be agreed upon for this territory as follows. Division forces would be called first, then system forces would be called and finally those employees working in system offices. The Carrier contends that changes were made beginning with fiscal year 2003, whereby construction forces were reassigned from “system” to “division.” The Claimant worked in the White Room Communications Control Center. Campbell worked in construction forces, which although previously on this territory belonged

to system forces, was now moved to the division forces. Accordingly, Campbell who was a part of the system forces, was senior to the Claimant on the call out list.

The Board reviewed the full record for evidence that the Claimant was next out under Appendix B-4. The Organization argues that the Claimant's rights were violated due to the fact that the calling procedures which had been mutually agreed under the Appendix were altered by Senior Engineer Bryan without consent of the Organization.

The Board carefully reviewed the full evidence and record. The Organization provided the seniority list which clearly indicates that the Claimant is ranked sixth and Campbell is ranked 32nd. The Organization alleged that Bryan altered the agreement between the parties that had existed for more than three years by date of July 22, 2003, a violation of Appendix B-4. It has clearly provided a Rule and evidence to provide a prima facie case. The Organization not only argues that the General Chairman did not agree to the change, but also asserts: "Where is a copy of Mr. Steffen's alleged agreement with Mr. W. Stafford A.D. E. as outlined in the Agreement?"

The Carrier asserted that the C&S office made "periodic updates to reflect employee changes in positions or qualification status" and did not violate the agreement when it changed the call out list. The Carrier states that "the last agreement . . ." was between the Carrier and "local Chairman Mr. Jim Steffen . . . that all qualified active division forces would be placed before Qualified System employees for Division Call-Outs."

The Carrier raised an affirmative defense, rejected by the Organization. The Board finds no evidence whatsoever to prove these assertions. There is no proof in the record that the call-out procedures were properly changed so as to permit Campbell to have the first right to the overtime instead of the Claimant. In fact, the Board finds that the Carrier had no right to change the procedures and thereby permit a junior employee to be called in preference to the Claimant. Although the Carrier finds the change agreed to, the Board finds no proof of said agreement with the Organization. Once denied, it was incumbent upon the Carrier to provide evidence, beyond assertions (Third Division Awards 15444, 18447 and 20107). The Board concludes that the Carrier changed the procedure in violation of Appendix B-4. The Claimant was improperly denied the right to overtime and the Carrier's

arguments that the claim is excessive because “. . . the proper penalty on this property for loss of work opportunity is payment at the straight time rate” is not proven inaccurate (Emphasis added). Our review on this property of the numerous Awards submitted support the Carrier in this regard (most importantly, Public Law Board No. 4549, Award 1). The Board is aware that the Award is with a different craft, but finds itself constrained by the unique record at bar. The claim must be sustained at the straight time rate of pay.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 27th day of August 2010.