

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40630
Docket No. SG-39152
10-3-NRAB-00003-050627
(05-3-627)**

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 H. P. Campbell, for 19 hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 20, when it failed to call the Claimant for overtime service and instead used a junior employee on the call list at North Penn Interlocking on April 8, 2004 and April 16, 2004, causing the Claimant to miss a work opportunity. Carrier’s File No. NEC-BRS(S)-SD-1049. General Chairman’s File No. Y321010106-180412. BRS File Case No. 13378-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.

There is no dispute regarding the facts of this case. Between 11:00 P.M. and 9:00 A.M. on April 8 and 11:00 P.M. and 8:00 A.M. on April 16, 2004, the Claimant was not called to perform overtime work. The work performed involved preparation work for the Track Laying System (TLS) at North Penn Interlocking in Philadelphia, Pennsylvania. There is also no dispute that the Claimant ranked No. 61 on the seniority roster, while the junior employee called to perform the overtime (Schreckengost) ranked No. 85. The work involved the operation of a backhoe which the Claimant was fully qualified to operate.

The Organization alleges that the Carrier violated the Claimant's seniority rights to the overtime work under Rule 20(i) which states:

"Where work is required by the Company to be performed on a day which is not part of any assignment, it may be performed by an available unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases, by the regular employee (See Appendix B-4 or B-5, as applicable.)"

Because there was no "unassigned employee" who had not worked 40 hours that week, the performance of the work should have gone to the "regular employee" who by seniority and qualifications would have been the Claimant. The Claimant is a Signal Maintainer, qualified in both signals and communications. As the Organization argues, "it is apparent the Carrier is trying to establish two separate rosters with construction and signal department employees with total disregard to ones' seniority."

The Carrier contends that the Claimant was not qualified for the work. The work was assigned to the "senior employee with the necessary qualifications" and that was not the Claimant. The work was properly assigned, in seniority order, to Signal Construction Gang R-964, "who normally and customarily" performed this work. The Carrier argues that the overtime work assignment was in compliance with Rule 20 and Appendix B-4 because it involved modifications and preparations of the signal system. Specifically, the Carrier argues that the Claimant was not

assigned to the Signal Construction Gang that did this work, but to the Communication Gang that did not perform work in connection with the signal system. Under the Rules, the Claimant did not have a seniority right to signal work he did not customarily perform ahead of employees who regularly did signal work.

Rule 20 (i) does permit the “regular” employee, as per Appendix B-4 and B-5 to perform the work disputed herein. The Carrier argued that the Claimant was not qualified and did not regularly perform the work. The burden of proof for this claim rests with the Organization to come forth with evidence to make a prima facie case. The fact that the Claimant was qualified to use a backhoe does not demonstrate qualification to perform work in connection with the signal system. As stated in Third Division Award 31422:

“Claimant apparently ‘normally’ maintained and often operated that backhoe to perform track related work; but that does not entitle him to exclusive use of that machinery or prevent Carrier from allowing or assigning employees of another craft to use that particular tool to perform a facet of their work. . . . The machine at issue is simply a tool, and the nature of the work it is being used to perform determines whether Claimant is entitled to be called in on overtime to operate the machine.”

The Board finds no proof in this record that the Claimant was qualified to the signal system work in dispute.

After careful consideration of the evidence at bar, the Board finds a lack of probative evidence that the Claimant, who worked as a Communications Maintainer on Communications Construction Gang R-961 was the senior employee, who by qualifications, would normally and customarily perform this work as the regular employee. The Claimant did communications work and there is no showing he did signal work. The Organization provided no proof that the Claimant would normally perform this work; nor is any Rule shown to provide a demand right to the work ahead of the employee who was called to perform the work. As such, the claim must be denied for lack of proof.

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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.