

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40636
Docket No. SG-40417
10-3-NRAB-00003-080226**

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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 L. V. Newell, for 45 hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Appendix B-3, when it allowed a junior employee to perform the work of unblocking and removing the clamps from new switches and securing them after testing was complete as well as other pre-cutover testing on August 16, 17, 23, 24 and 30, 2006, instead of the Claimant, who was senior and available, denying him this work opportunity. Carrier’s File No. BRS(S)-SD-1094. General Chairman’s File No. AEGC-07-102-1. BRS File Case No. 13846-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.

The facts of this instant case document that two gangs were working at County Interlocking. The Claimant was with Gang Q-064 and clearly had seniority over B. J. Applegate, a member of the other gang working, i.e., Gang R-951. Additionally, the facts indicate that on August 15, 2006, the Claimant worked at County Interlocking, while junior Signalman Applegate worked at Union Interlocking. Accordingly, the Organization argues that the Claimant, who was both the senior employee and actually working at County Interlocking on the day prior to the overtime assignment, had the right to the work. The Organization asserts that this is clearly the Claimant's entitlement under Appendix B-3. Utilization of a junior employee who did not work at the location prior to the overtime in preference to the senior employee who did work at County Interlocking is a clear Carrier violation.

The Carrier asserts that the facts support the proper use of Applegate over the Claimant. The Carrier asserts that while Signalman Applegate may not have performed work at County Interlocking on August 15, 2006, his gang did and Appendix B-3 supports the right of overtime to the gang that was performing the work. The Carrier argues that the Claimant worked at County Interlocking performing work with his gang on the day prior to the overtime in dispute. However, Claimant's Gang Q-064 was not performing the work involved in the overtime on the day proceeding the overtime of record. The Carrier therefore argues that the proper interpretation of Appendix B-3 gives preference to the employees on the gang that was "actually performing the work." As such, the Carrier did not violate the Agreement.

The Board carefully reviewed the facts and, in particular, the Daily Report Foreman C&S Construction at County Interlocking. We also reviewed both Rule 56 and Appendix B-3 on overtime preference and seniority assignment "Continuous with Tour of Duty." There is no claim on the part of the Organization applicable to Appendix B-3, part (c). As such, the sole application to this issue rests with the meaning of parts (a) and (b) which hold that:

“(a) When it is known in advance of the end of a tour of duty that a portion of a gang is to be worked on a subsequent tour of duty (not a part of their regular assignment) or continuous with the current tour of duty, those with the greatest seniority in the class who were actually performing the work prior to the overtime will be given the first opportunity for the overtime.

(b) If additional employees are required for such overtime, other qualified employees in the gang will be offered the overtime in seniority order.”

In this instant case, the gang that was performing the work must be ascertained. The on-property record indicates that at County Interlocking on August 15, 2006, Gang R-951 was involved in the installation of new switch and signal equipment both prior to and on the dates of the claim. Gang Q-094 was involved in the performance of winter switch preparation. The Claimant belonged to Gang Q-094 and there is no probative evidence that he was engaged in the work to be performed on overtime, i.e., the testing and cut over of the new switch and signal equipment.

Because Appendix B-3, *supra*, gives preference to the continuation of the “gang” in the performance of the work, there is no proof of a Carrier violation. While the Claimant was working at County Interlocking on the day prior to the overtime and Signalman Applegate was not, Gang R-951, of which Applegate was a member, had Agreement preference to the work over the Claimant who was not “performing the work” on August 15, 2006 and neither was the Claimant’s Gang Q-094. The Organization can demonstrate that the Claimant was at the location, but not that he was entitled to the overtime by seniority under Appendix B-3 (Third Division Awards 35757, 37177 and 37178). Accordingly, the Board can find no proof that the Carrier’s use of Signalman Applegate under these circumstances where Applegate’s Gang actually performed the work prior to the overtime violated the Agreement. The claim must be denied.

AWARD

Claim denied.

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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.