

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40642
Docket No. SG-40895
10-3-NRAB-00003-090209

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 T. A. Backert, for 198 hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Appendix B4, when it failed to assign the Claimant to perform planned overtime service on his assigned territory on April 19, 22, 23, 24, 25, 26, 27 and 30, 2007, and May 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 21, 22, 23 and 24, 2007, denying the Claimant the opportunity to perform this work. Carrier’s File No. BRS(S)-SD-1106. General Chairman’s File No. AEGC-07-48-01. BRS File Case No. 14063-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 question at bar is what, if any, does past practice and the Agreement's "call out rules on overtime" entitle the Claimant? The Organization argues that Appendix B-4, Sections 5 and 6 and the facts of this case obligated the Carrier to utilize the Claimant for work performed on the Susquehanna River Bridge Project.

The Carrier argues that the Claimant was not the proper employee to be called first for the overtime work by either Agreement or practice. In fact, the Carrier asserts that Letts was properly called for the overtime and had the right to the work.

The work in dispute involved interlocking protection on the Susquehanna River Bridge Project when only a single track would be in operation across the bridge. The facts of this case are that the Claimant was the Aberdeen Section Maintainer during the April through May dates of 2007. When the project was assigned in 2005, the Aberdeen Section Maintainer was assigned the work. The Organization's position is that past practice was abrogated by the Carrier under the guise of asserting that the Customer Services Department could elect to supercede the Agreement and past practice and route trains in a manner so as to deny the Claimant his demand rights to the work.

The Organization has the burden of proof to demonstrate that the Claimant rather than Letts was due the overtime assignment rights to the work performed. The Board fully studied the record and finds that the Organization's assertions fail on both past practice and Appendix B-4 language. The facts are that the Claimant is the Aberdeen Section Maintainer whose responsibilities cover the Prince and Grace Interlocking. Letts is the Perryville Section Maintainer whose responsibility is the Price and Wood Interlocking. In this instance, the Carrier noted that in 2005 the Customer Services Department working in connection with the Susquehanna River Bridge Project elected to route trains at Price and Grace Interlockings. Because Grace was on the Aberdeen Section Maintainer's territory, the work belonged to the Aberdeen Section Maintainer. In 2007, during the second phase of the project, the Customer Services Department elected to route trains at Price and Wood Interlockings. The Board notes that Grace Interlocking (the Claimant's territory) is not included. Accordingly, the probative evidence of the Claimant's

rights is not documented. In fact, Prince Interlocking belongs to the Perryville Section Maintainer (Letts).

The argument that the “past practice” of using the Aberdeen Section Maintainer in 2005 gives precedence to the second phase overtime right in 2007 is rejected. The Claimant was no longer on the territory where the work was performed and Letts was the proper Signal Maintainer under the Appendix. Letts’ regular assignment included the Prince Interlocking, which gave him the Agreement right under Appendix B-3 and B-4 to the overtime. The Board finds no proof that selection by the Customer Services Department for operational needs to route trains in this manner either was improper or done with the intent to run around the Agreement.

Accordingly, the Organization failed to meet its burden of proof. The Board finds that the Carrier properly assigned the overtime. The claim must be 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.