

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40643
Docket No. SG-40996
10-3-NRAB-00003-090330**

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. Belcher, for 25 hours at his time and one-half rate of pay account Carrier violated the current Signalmen’s Agreement, particularly Appendix B4, when it used a junior employee on the call list to perform overtime service on August 1, 6, 7 and 8, 2007 from (sic) and denied the Claimant the opportunity to perform this work. Carrier’s File No. BRS(S)-SD-1107. General Chairman’s File No. AEGC-08-65-01. BRS File Case No. 14122-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.

On August 1, 6, 7 and 8, 2007, the Carrier utilized junior employee Sroka to perform overtime service at Gunpow Interlocking. Sroka is regularly assigned to C&S construction Gang E-092 at the Gunpow section. The Carrier did not call the Claimant, who is regularly assigned to C&S maintenance Gang E-022.

The Organization argued on the property that the work performed belonged to the Claimant and not to Sroka. It maintains that the work was protected by the Signalmen's Agreement, and constituted a violation of Rule 36. The use of a "construction" employee rather than a "maintenance" employee was clearly a violation of the Agreement.

The Carrier contended that the work performed was part of a construction project on which Sroka had been involved. The use of Sroka complied with Appendix B-3(a) and B-3(c) because he was continuing to work the project and was entitled to the overtime. The Carrier makes clear that Sroka was continuing work beyond his normal tour of duty "in conjunction with the end of the switch replacement project."

The Board carefully studied the record. The burden of proof rests with the Organization to demonstrate that the work belongs to maintenance forces, i.e., the Claimant. Clearly, if the work performed was on existing equipment, it belonged to the Claimant. If the work performed involved the substitution or modification of the signal system, then such replacement belonged to construction forces (Sroka). What the on-property record indicates is essential to the Board's decision.

The Carrier states that the work was "support of the switch replacement project at Gunpow interlocking." The Organization states that the work was "Providing protection for MW forces (track welders)." There is no rebuttal on point. The Carrier concedes that Sroka "worked overtime supporting track welders with the end of the switch panel renewal project work." The Organization argues that:

"Providing protection for MW forces (track welders) is not part of Mr. Sroka's regular assignment. The work performed by Mr. Sroka is regularly assigned to C&S maintenance. Rule 36 of the agreement does mention that Construction/Rehabilitation gangs will not be used to replace regular maintenance gangs."

There is nothing in this record to indicate that the work that the construction employee (Sroka) performed had anything whatsoever to do with the installation of the switch. The Carrier states that it was “work in connection with the switch panel renewal project” and that Sroka “worked overtime supporting track welders with the end of the switch panel renewal project work.” The Organization alleged that the work herein disputed was not construction. The Organization stated that:

“To simply suggest Construction (Sroka) has rights to any work in conjunction with a project simply is illogical. The welding of track is not our work. It is work performed by the MofW department employees. If C&S support is needed and in this case it was, it should go to the employee normally assigned to maintain and test the equipment to assure its integrity.”

The work at dispute for overtime clearly involved supporting Track Welders. There is no denial that this work was at the end of the project and after the installation was complete. At no point did the Carrier deny that what remained was to maintain and test, rather than to install.

The Board is persuaded from this record that for purposes of this Agreement and the Rules and Appendices that we carefully considered, the project was over when the installation was complete. There is nothing in this record to suggest that Sroka performed any work other than supporting Track Welders. There is nothing in this record to persuade the Board that any construction work to put the switch in service remained at the end of this project. Certainly, there is nothing to suggest that Sroka was performing work that was related to construction. The protection of Track Welders was the only overtime work in dispute.

The Board concludes, after a detailed analysis, that the work herein disputed belonged to the regular maintenance employee as per Appendix B-4 and that the Agreement was violated. The Claimant had the right to the work. Accordingly, the claim will be sustained, but at the straight time rate of pay consistent with the known Awards on this property that have awarded straight time for lost work opportunities.

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.