

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40829
Docket No. SG-40496
11-3-NRAB-00003-080342

The Third Division consisted of the regular members and in addition Referee Lisa Salkovitz Kohn when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Railroad Signalmen**
(**(Northeast Illinois Regional Commuter Railroad**
(**Corporation (Metra)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Rail Corp.:

Claim on behalf of R. J. Mezo, for 12 hours at his time and one-half rate of pay plus any additional time worked on other dates, account carrier violated the current Signalmen's Agreement, particularly Side Letter 13 of the May 16, 1999, Agreement, when it assigned another employee instead of the Claimant to perform planned overtime cutting over signal circuits on his assigned territory on December 9 and 10, 2006, and denied the Claimant the opportunity to perform this overtime service. Carrier's File No. 11-21-614. General Chairman's File No. 210-MW-07. BRS File Case No. 14019-NIRC.”

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 Saturday, December 9, 2006, the Claimant was assigned as the first shift B12 Signal Maintainer, headquartered at Franklin Park, on the Carrier's Milwaukee District. During the previous week, December 4 through 8, 2006, a gang of Signal employees and two Signal Testmen were performing work at Edgington returning grade crossing prediction devices (GCPs) and verifying the operation of disarranged signals. The work at Edgington was not completed during the week. On Saturday, December 9, 2006, two Signal Testmen, and the Lead Signalmen from the gang that had performed the work during the scheduled workweek, were assigned to perform overtime to complete the verification of signals and restore GCP protection work at this location. The work was completed on December 9. The Testmen and Lead Signalmen performed no work on Sunday, December 10, 2006.

The Organization submitted a claim that Side Letter 13, dated May 16, 1999, was violated when the Claimant was not called to perform overtime service at Edgington on December 9 and 10, 2006, during a planned signal cutover. The claim requested 12 hours of pay at the overtime rate for the Claimant.

Side Letter 13, dated May 16, 1999, concerns "the access maintainers have to overtime when other Signal Department employees are performing work on a maintainer's assigned territory or plant," and includes the recognition that "inasmuch as signal maintainers have primary responsibility for the maintenance of their assigned territory or plant, they should be utilized, to the extent possible, when work is to be performed on such assigned territory or plant." In particular:

"Further, when so called 'cut-overs' of equipment or systems on a maintenance territory or plant occur, the Carrier shall, to the extent possible, include the assigned maintainer in the work being performed in completing the cut-over so as to afford the maintainer the opportunity to gain familiarity of the equipment or system, irrespective of whether or not such involvement results in overtime."

In this case, the parties dispute the characterization of the work performed on December 9, 2006. The Organization asserts that this was planned overtime work in association with a signal cutover at Edgington Interlocking, on the Claimant's assigned territory, and he should therefore have been assigned to work. The Carrier contends that weekend did not involve a signal cutover. According to the Carrier, the work performed was to reinstate the signal system to a safe condition during construction, by removing a signal foundation and backfilling holes, so Side Letter 13 did not require the Carrier to assign the Claimant to work. Because no cutover work was performed Side Letter 13 merely required that the Claimant be considered for overtime on the basis of his seniority as if he were a member of the gang that performed the work, the Carrier asserts. Because the skill level required for the work was best suited to the Signal Testman classification and the employees who worked on December 9 were all senior to the Claimant, the Claimant was not entitled to any overtime. (A dispute over whether the Organization properly preserved a claim for work on December 9 rather than December 10 has been dropped by the parties.)

No signal was added to the system on December 9, 2006. According to the work reports for that day, the Signal Testmen performed "testing at Edgington plant & x-ing [crossing]," while two Signalmen called for overtime performed "clean up work – removed old sig[nal] foundation case & backfilled holes." Although the work report for the two other Signalmen described their work that day as "work cutover at Edgington," the detail given was "digging up signal foundation, clean up." Notwithstanding the note on this work report, the Chief Engineering Officer stated that cutover work was not performed that day. The Organization failed to prove that there was a signal cutover on December 9, 2006.

The Organization advocates for a broader definition of "cutover," asserting that the cutover includes "the disarrangement [of signals] and testing performed for the purpose of cutting over the new signal system, . . . and testing of the equipment before it was all permanently put into service." This definition is contrary to the common understanding in the industry. As the Organization observes, "Many times parts of an interlocking plant are tested prior to the date when the cutover is finally completed to discover any components that are not functioning properly, or other operational needs." However, that does not mean that the earlier testing is part of the cutover itself. In sum, because there was no cutover on December 9, 2006, the Carrier did not violate the requirement of Side Letter 13 that "when so called 'cut-overs' of

equipment or systems on a maintenance territory or plant occur,” the Carrier shall, to the extent possible, include the assigned Maintainer (here, the Claimant) in the work being performed in completing the cut-over.

Side Letter 13 also provides that Rule 15 is defined to include Maintainers as being part of the gang for the purpose of overtime assignments, “provided such maintainer(s) actively participate, to the extent possible, in the work being performed during assigned hours” and provided that “[s]uch use of the maintainer(s) shall not serve to affect the manpower that is required to perform the work.” The Board finds that the Carrier has not violated this requirement either, because the Claimant was junior to all Signal employees assigned to the Edgington overtime work, and no additional manpower was needed.

For all of these reasons, the claim is 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 11th day of January 2011.