

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40843
Docket No. SG-40807
11-3-NRAB-00003-090072

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of J. L. Duree, for 14 hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 13, when it used junior employees instead of the Claimant for overtime service on August 24, 2007, and denied the Claimant the opportunity to perform this work. Carrier’s File No. 1485497. General Chairman’s File No. UPGCW-13-1486. BRS File Case No. 14073-UP.”

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.

This claim protests the Carrier's failure to assign the Claimant, a Signal Foreman, to haul equipment with the gang truck on August 24, 2007, and instead selecting two junior employees (Signalman and Assistant Signalman) for this overtime assignment. It is undisputed that the Claimant was the senior man on the gang. The record contains no evidence of any physical restrictions placed upon the Claimant. The following language of RULE 13 - OVERTIME (Subject to Hours of Service Act) is relied upon by the Organization in support of this claim:

"... Where gang men are required to work overtime, the senior man in a class in the gang will be given preference to such overtime work."

The Organization argues that Rule 13 clearly and unambiguously entitles the Claimant to the overtime assignment in issue based upon the principle of seniority, and must be applied as written, citing Third Division Awards 12632, 14161, 19695, 19758, 20687 and 33159. It asserts that the Carrier's determination that the Claimant was not qualified for the assignment was based upon an inaccurate and unproven allegation that he was restricted from driving the truck, when, in fact, he was qualified and available for the assignment and had no medical restrictions.

The Carrier contends that there is nothing restricting it from determining how best to utilize its forces. It posits that there was no Foreman work to be performed in this case, so it properly selected the class of employee that regularly performs the truck driving function for the overtime in issue, citing Third Division Awards 34087 and 36842. Further, the Carrier asserts that it reasonably determined that the Claimant did not have the fitness and ability to perform the truck driving function needed for this assignment based upon his previous injury and expressed medical concern that operating a truck caused him left knee pain.

A careful review of the record convinces the Board that the Claimant was entitled to the overtime assignment in issue under the clear language of Rule 13. He was the senior man in the gang, and had the ability to operate a truck, even if he was working in the Foreman classification at the time. The Carrier justified its assignment to the junior Signalmen by stating that the Claimant had medical restrictions preventing him from operating a truck and disqualifying him from this assignment. However, the Carrier was unable to prove the existence of any medical restrictions on the Claimant when asked to do so. The fact that he had filed an injury report months earlier and had seen a doctor concerning his left knee was an

insufficient basis upon which to find him medically disqualified from operating the truck on this occasion. While the Carrier has the right to utilize its forces as it sees fit, it cannot do so in a manner that abrogates the Claimant's seniority entitlement to overtime set forth clearly in Rule 13. Because the Claimant lost an overtime work opportunity of 14 hours on August 24, 2007, the claim will be sustained.

AWARD

Claim sustained.

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 11th day of January 2011.