

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40853
Docket No. SG-41104
11-3-NRAB-00003-090494**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 T. A. Stephenson, for 50 hours at his half time rate of pay in addition to any other compensation he received on the dates claimed, account Carrier violated the current Signalmen’s Agreement, particularly Rules 13 and 16, when it used a junior employee instead of the Claimant for service off their gangs assigned territory on March 19, 20, 21, 22 and 23, 2008, and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 1504588. General Chairman’s File No. S-13, 36-945. BRS File Case No. 14212-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 failure of the Carrier to assign the Claimant to regular work off zone in preference to a junior employee. It relies upon the following Agreement language to support the Claimant's entitlement to the additional pay:

"RULE 13 - OVERTIME (Subject to Hours of Service Act)

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.

RULE 36 - TRAVELING GANG WORK

. . . If a zone gang is performing work off of its zone, the employees of that gang will receive one and one-half time pay, up until the employees of the gang qualify for double-time, at which time they will be paid at the double-time rate."

At the relevant time, the Claimant was assigned to Signal Gang 2121, which Carrier split into two work groups to cover different projects based upon its operational needs. The Claimant was assigned to the group following the Maintenance of Way Curve Gang, and Stone, the junior employee, was assigned to stay with the gang working off zone. Since Stone worked off zone during his regularly scheduled hours, he was paid the time and one-half rate under Rule 36; he worked no overtime during the claim period and received no overtime pay. The Claimant did not work off zone, but did work overtime on March 20, 21 and 22, for which he received his overtime rate under Rule 13.

The Organization argues that the Claimant had the right to remain with his gang and work off zone, rather than Stone, because Rules 13 and 36 clearly reveal his seniority preference to overtime, which Stone received for all hours worked on the project, citing Third Division Awards 12632, 19695, 20261, 20687, 30833, 33159, 33909 and 35503.

The Carrier contends that the Organization failed to show how either Rule 13 or 36 were violated, because it has established that no overtime was worked by Stone or his gang, making Rule 13 irrelevant, relying on Third Division Award 37908. Further, the Carrier asserts that Rule 36 does not provide for the senior employee of a gang to request to be regularly assigned off zone over a junior employee, and that it has the managerial prerogative to assign work to employees based upon operational needs, citing Third Division Award 37867. The Carrier alleges that because the Claimant did not work off zone, he was not entitled to additional compensation under Rule 36.

A careful review of the record convinces the Board that the Organization has not met its burden of establishing a violation of Rule 13 in this case. There was no evidence that the junior employee was compensated for any overtime work as defined in Rule 13 - time worked preceding or following and continuous with a regularly assigned work period. Thus, Rule 13 is inapplicable. The junior employee was compensated at the time and one-half rate for his regularly scheduled hours based upon the provisions of Rule 36, since he worked off zone. Because the Claimant did not work off zone, the Organization did not establish any Agreement entitlement to such regular work assignment - which remains the prerogative of management - and no overtime was worked by the group working off zone, no additional compensation is owed to the Claimant under either Rules 13 or 36. See Third Division Award 37908.

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.