

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40905
Docket No. SG-41096
11-3-NRAB-00003-090469

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

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(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 M. W. Gercken, for 11 hours at his respective overtime rate of pay, account Carrier violated the current Signalman’s Agreement, particularly Rules 15 and 26, when it used a junior employee instead of the Claimant for overtime service on April 20, 2008, and denied the Claimant the opportunity to perform this work. Carrier’s File No. 11-21-681. General Chairman’s File No. 204-MW-08. BRS File Case No. 14293-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.

At all times relevant to this dispute, the Claimant was a Signal Testman on Metra's Milwaukee District, headquartered at Western Avenue in Chicago, Illinois. The Organization objects that on April 20, 2008, the Carrier worked a signal employee who was junior to the Claimant and did not work the Claimant, in violation of Rules 15 and 26.

The facts leading to this dispute are as follows: Over the weekend of April 12, 2008, the Carrier assigned the Claimant overtime work, operating a boring machine and the wand that directs the boring machine's auger. The Claimant is among only a small number of employees who have been trained to operate this equipment. The work was at the Medinah, Illinois, passenger depot on the Milwaukee Engineering District. The Claimant was to operate the boring machine to tunnel under the platform and pull signal cable through under the platform. The Claimant was assigned to assist Signal Gang 6 because no employee in Signal Gang 6 or the Maintenance territory on which it worked was qualified to operate the boring machine.

On April 12, 2008, Signal Gang 6 and two Signal Maintainers also were assigned to work. Their ability to complete their assigned work depended on the Claimant's successful operation of the boring machine and wand. However, even though the Claimant worked for 12 hours, he was unable to complete the bore, and the work was rescheduled to the following weekend, Sunday, April 20, 2008.

On Sunday, April 20, 2008, the Carrier did not assign the Claimant to complete the work. Instead, the Carrier assigned the work of operating the boring machine to the second shift Elgin Maintenance Territory Signal Maintainer, another employee who had received training on the equipment. The employee called was junior to the Claimant. However, he was able to complete the bore that day. He worked six hours operating the boring machine and an additional five hours that day. Like the Claimant, the junior signal employee was not assigned to Signal Gang 6, nor was he a Signal Maintainer on the maintenance territory where the work was performed. Like the Claimant, he was assigned to the Milwaukee Engineering District.

On May 4, 2008, the Organization filed a claim asserting that the Carrier violated Rules 15 and 26 on Sunday, April 20, 2008, by working the junior Signal Maintainer instead of the Claimant.

The Board recently considered similar disputes in Third Division Awards 40902 and 40903. Rule 26 provides the basic definition of "seniority" — "Seniority shall consist of rights based on relative length of service of employees as herein provided." The Organization asserts that Rules 15 and 26 are clear that, when needed, the senior signal employees will be called for overtime service on their assigned territory. But in Awards 40902 and 40903 the issue was whether the Carrier was entitled to assign overtime work to a junior employee who was part of the group performing the work during the regular workweek, rather than to an employee, who, while senior and qualified, had not been a part of the group of employees working together. Instead, in this case, neither the Claimant nor the junior employee who worked on April 20, 2008, was part of Signal Gang 6, for whom the work was to be performed.

The Carrier contends that the critical question here is whether the Claimant was "qualified" to perform the specialized work that had to be performed, asserting that the Claimant had demonstrated his lack of necessary skills and ability by failing to perform the work satisfactorily when given the opportunity during the weekend of April 12, 2008. Because the Claimant was incapable of performing the specialized work, the Carrier asserts that it was entitled to assign the work to a qualified junior employee, noting that the junior employee did in fact complete the work in six hours on April 20, 2008. The Organization responds that the Carrier failed to consider the many factors, other than operator error or lack of skill, that might have contributed to the unsuccessful bore the preceding weekend, such as weather and equipment problems; however, there is no evidence that weather or equipment problems were an issue. The Organization also asserts that the work required the cooperation of the entire gang, as well as the Claimant, but failed to identify how employees other than the Claimant contributed to the failed bore on April 12, 2008. The Organization failed to demonstrate that the Carrier abused its discretion in its assessment of the Claimant's ability to perform the work to be done on April 20.

Seniority is one of the basic cornerstones of collective bargaining, and the Organization is correct that the Carrier was obligated under Rules 15 and 26 to give the Claimant the first preference for the overtime assignment of operating the boring

machine and wand in support of Signal Gang 6 because he was the more senior of the available employees with the training required to operate the machine. However, the Carrier did give the Claimant that first preference, by assigning him the overtime for the weekend of April 12, 2008. Unfortunately, he proved himself unable to carry out the assignment.

The Organization does not dispute that operation of the boring machine and wand requires special skills, training and abilities, and that both the Claimant and the junior employee had training and experience in operating the boring machine. However, nothing in Rule 15 requires that the Carrier continue to give the Claimant preference for an overtime assignment that required specialized skills and training once he had proved himself unable to perform the assignment despite the prior training. The Organization suggests that by working the overtime on the weekend of April 12, the Claimant became "part of the group of employees who customarily work together" who would be entitled to the April 20 overtime as a member of that group. However, the Claimant never became part of Signal Gang 6, nor did he work with them at any time during his regularly scheduled hours. The single specialized assignment on April 12 did not make him "part of the group of employees who customarily work together."

The Organization failed to identify any other provision that barred the Carrier from offering the April 20, 2008, overtime to the next most senior employee who had the necessary skills and qualifications to perform the task after the Claimant had been given the opportunity but failed at the task. Nor has the Organization identified any provision that obligated the Carrier to call the Claimant for a specialized overtime assignment that he had proved himself incapable of performing, and the Carrier was not required to give the Claimant an overtime opportunity merely because it was transferring the assignment to a junior qualified employee.

AWARD

Claim denied.

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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 10th day of March 2011.