

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40908
Docket No. SG-40894
11-3-NRAB-00003-090206**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Belt Railway Company of Chicago**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Belt Railway of Chicago:

Claim on behalf of R. H. Rogers, for 36 hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 17(A3), when it used a junior employee to perform overtime work on a signal cutover instead of the Claimant on June 18, 19, and 20, 2007, and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 08-BRSA-001. General Chairman’s File No. 07-07-BRC. BRS File Case No. 14177-BELT.”

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.

The instant dispute results from a conflict of material fact. The Claimant asserts that he was entitled to be offered the overtime assignment described in the Statement of Claim because of his greater seniority. According to his statement, he did not decline the overtime opportunity because he was never offered it. According to the Carrier, the supervisor did contact the Claimant to offer the overtime work, but the Claimant declined because he had other plans during the time frame in question. The record contains a work record that appears to contradict the Claimant's position; however, other evidence in the record contradicts the accuracy of the work record.

It is well settled that the Board is an appellate tribunal that has no effective means of reconciling disputes of material fact. When a record presents the Board with such a conflict, it has no choice but to deny the claim for failing to satisfy the burden of proof. It must do so in this case as well.

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 10th day of March 2011.