

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41188
Docket No. SG-40716
12-3-NRAB-00003-080604**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 T. H. Stone, for 12 hours pay at the overtime rate for each day the violation occurred, June 3, 4, 10, 11, 17 and 18, 2006, account Carrier violated the current Signalman’s Agreement, particularly Rule 15, and Side Letter No. 10 (SET letter dated October 24, 1989), when Carrier allowed employees who were junior to the Claimant to perform overtime service in connection with a tie gang working on the Milwaukee District; as a result the Claimant lost a valuable work opportunity. Carrier’s File No. 11-21-579. General Chairman’s File No. 9-MW-06. BRS File Case No. 14055-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.

In June 2006, a gang of Signal employees was assigned to provide support for a Maintenance of Way tie gang on the Milwaukee Engineering District and the Signal gang performed this work during their scheduled workweek. When overtime became necessary to support the Maintenance of Way tie gang on the weekend, the Carrier assigned employees from the Signal gang to perform the weekend overtime.

According to the Carrier, the Claimant was the senior Signal Testman and Signal Journeyman on the Milwaukee District. At the time this dispute arose, the Claimant had assigned hours of 7:00 A.M. to 3:00 P.M., Monday through Friday. The Claimant was not involved in the project performed by the Maintenance of Way and Signal gangs during the workweek prior to the weekend overtime in dispute. The Claimant was senior to the Signal employees who received the weekend overtime. Further, the Claimant also held prior rights on the Milwaukee District. This claim was filed when the Claimant did not receive the overtime assignments on the dates set forth in the claim.

The relevant Rules provide:

“RULE 15

SECTION 1 - (a) OVERTIME – BEFORE AND AFTER BASIC DAY: The hourly rates named herein are for an assigned eight (8) hour day. All service performed outside of the regularly established working period shall be paid for as follows:

Overtime hours, either prior to or following and continuous with regular working period, shall be computed on the actual minute basis and paid for at one and one-half times the basic straight time rate.

Time worked in excess of sixteen (16) hours of work in any twenty-four (24) hour period, computed from the starting time of the

employee's regular shift, shall be paid for at double their basic straight time rate.

When overtime service is required of a part of a group of employees who customarily work together, the senior qualified available employees of the class involved shall have preference to such overtime if they so desire."

Side Letter No. 10

"Prior rights, and the seniority that goes with it, shall be applied as being superior to an individual's relative position on the system seniority roster when an employee is stationed on their prior rights district. Prior rights takes priority in the exercise of seniority, overtime allocation, and preference for receiving vacation or other paid for time not worked."

The Organization does not seek overtime work performed on the same day as the Signal employees who supported the Maintenance of Way gang, but seeks weekend overtime work on the Milwaukee District for the Claimant as a senior prior rights employee in that district.

The Organization's claim has merit.

First, Side Letter No. 10 (dated May 16, 1999) clearly gives the Claimant the right to the claimed overtime work ("[p]rior rights takes priority in the exercise of seniority, overtime allocation. . . .")

Second, in Public Law Board No. 5565, Award 34, the same dispute was determined in the Organization's favor under the clear provisions of Side Letter No. 10:

"Some employees on the Signalmen's seniority roster, like the Claimant in this case . . . also have a 'prior rights' designation beside their names. The 'prior rights' designation pertains to a former railroad territory now incorporated into NIRCRC's suburban commuter operation and accordingly absorbed into the system-wide seniority district. For operating purposes these work territories are

differentiated with 'District' names, *e.g.*, the so-called Rock Island District (former Rock Island Railroad territory), Milwaukee District (former Soo Line territory), Metra Electric District (former Illinois Central Gulf territory), and Southwest Service District (former Norfolk and Western territory).

* * *

Once we eliminate several red herring arguments raised by one or another of the Parties in on-property handling of this case, including but not limited to irrelevant invocations of Side Letter No. 13 and appeals to 'past practice', this case is governed by the express clear and unambiguous language of Side Letter No. 10:

* * *

Leaving aside the fact that Claimant's relative position on the system seniority roster was #1, under the plain words of Side Letter No. 10 his RID priority rights 'take priority in overtime allocation'. Side Letter No. 10 entitled him to priority in overtime allocation in the RID on March 10-11, 2001, over an employee in the same seniority class who had no such priority rights in the RID. . . ."

For the Carrier to prevail, the Board would have to find Public Law Board No. 5565, Award 34 palpably erroneous. We cannot do so. That Award reasonably (and correctly, we believe) applies the relevant language to a similar factual dispute. For purposes of stability, we cannot find that Award to be palpably erroneous.

The Carrier's reliance on other Awards does not change the result.

This Referee's decision in Third Division Award 39491 involved an employee who was a Signal Electronic Technician (SET) on the Milwaukee District who was senior to other employees who were assigned weekend overtime work on a cutover working with electronic equipment (GCP's, SEAR units, SSCC, codeline, AFTAC) and general signal circuits on the Milwaukee District. The Organization's reliance on Side Letter No. 10 was rejected because it was not found to entitle the employee therein to the overtime:

“Side Letter No. 10 addresses the establishment of the SET position. However, Side Letter No. 10 does not obligate the Carrier to assign the Claimant the disputed overtime work merely because he held an SET position. On the contrary, Side Letter No. 10 specifically states that “[t]his rule shall not be construed as prohibiting Signal Maintainers or other qualified Signalmen from making test, inspections and repairs as necessary.” [Emphasis added]. The Claimant gains no assignment rights from Side Letter No. 10 for the disputed work.”

From that Award, prior rights of the employee therein were not asserted as the driving factor for entitlement to the overtime assignment. This case is about prior rights under Side Letter No. 10 for overtime assignments.

To the extent the Carrier argues that Third Division Award 40832 can deprive a senior employee with prior rights from weekend overtime opportunities on the employee’s prior rights district, the Carrier reads the language “[p]rior rights takes priority in the exercise of . . . overtime allocation . . .” out of Side Letter No. 10 and disregards the holding of Public Law Board No. 5565, Award 34. That conclusion simply does not flow from the clear language of Side Letter No. 10 and the similarly clear holding of Public Law Board No. 5565, Award 34 which is on all fours with this case. The same holds for the Carrier’s reliance upon Third Division Awards 40829, 40833, 40834 and 40904. Third Division Award 28490 relied upon by the Carrier does not address Side Letter No. 10.

The bottom line here is that the language of Side Letter No. 10 is clear and unambiguous – “Prior rights, and the seniority that goes with it, shall be applied as being superior to an individual’s relative position on the system seniority roster when an employee is stationed on their prior rights district. Prior rights takes priority in the exercise of seniority, overtime allocation. . . .” [Emphasis added] Public Law Board No. 5565, Award 34 recognized the clarity of that language and governs this dispute. The claim must therefore be sustained. If the Carrier desires to change the language which affects prior rights employees, it will have to do so at the bargaining table or wait until the prior rights employees are no longer an issue as a result of attrition.

In terms of a remedy, the Claimant lost overtime opportunities. The Claimant shall therefore be made whole for those lost opportunities. However, if

the Claimant earned overtime on any of the dates set forth in the claim, those amounts shall be offset against the Carrier's liability.

AWARD

Claim sustained in accordance with the Findings.

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 22nd day of February 2012.