

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41196
Docket No. SG-40814
12-3-NRAB-00003-090071**

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 K. C. Lovato, for 12 hours overtime account Carrier violated the current Signalmen’s Agreement, particularly Rule 15 and Side Letter 10 (dated May 16, 1999), when it used a junior employee instead of the Claimant for overtime service on October 29, 2007 (sic) and denied the Claimant the opportunity to perform this work. Carrier’s File No. 11-21-538. General Chairman’s File No. 126-RI-05. BRS File Case No. 14104-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.

On Saturday, October 29, 2005, the Carrier assigned overtime to a Signal Testman junior to the Claimant to perform the testing of signal cable on the Carrier's Main Line territory, which was not on the Claimant's assigned territory, but was on the Claimant's Rock Island prior rights district. This claim followed.

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.”

As set forth in detail in Third Division Award 41188, Side Letter No. 10 and Public Law Board No. 5565, Award 34 govern this dispute:

“First, Side Letter No. 10 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:

* * *

‘. . . [U]nder 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 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. . . .”

There is no evidence that the Claimant was not qualified to perform the work in dispute. Because of Side Letter No. 10 and Public Law Board No. 5565, Award 34, the Claimant was therefore entitled to the overtime opportunity on the date set forth in the claim.

In terms of a remedy, the Claimant shall be made whole for any lost overtime opportunities on the dates set forth in the claim. 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.