

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41209
Docket No. SG-40929
12-3-NRAB-00003-090248**

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 and R. J. Shanahan, for 24 hours overtime each, account Carrier violated the current Signalmen's Agreement, particularly Rule 15 and Side Letter 10 (dated May 16, 1999), when it used junior employees instead of the Claimants for overtime service on October 27 and 28, 2007, and denied the Claimants the opportunity to perform this work. Carrier's File No. 11-21-643. General Chairman's File No. 108-RI-07. BRS File Case No. 14198-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 the time this dispute arose, Claimant K. C. Lovato was a Signal Maintainer at the Gresham Interlocking and Claimant R. J. Shanahan was a Signal Maintainer at the Joliet UD Interlocking on the Rock Island District. The Claimants worked Monday through Friday schedules. The Claimants also held prior rights on the Rock Island District.

On Saturday, October 27 and Sunday, October 28, 2007, the Carrier assigned two Signal Electronic Technicians (SETs) who were junior to the Claimants to work overtime during the renewal of the 95th Street crossing on the Main and Suburban Line Territory on the Rock Island District. The SETs were used to jumper the crossing out of service and they then performed testing and recalibration to the grade crossing warning system to assure they were working properly. According to the Carrier, the SETs assigned the work on the dates in dispute (1) had worked at 95th Street on the day prior to the first date in dispute (2) had provided signal support for a Maintenance of Way Tie Gang working on the territory and (3) had performed this same work on grade crossings on this territory over the previous month. In addition, the work in dispute stemmed from their regular assignment. There is no showing that the Claimants were not qualified to perform the work.

As in Third Division Award 41188, Side Letter No. 10 dated May 16, 1999 (“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 . . . [and p]rior rights takes priority in the exercise of seniority, overtime allocation, and preference for receiving vacation or other paid for time not worked”) and Public Law Board No. 5565, Award 34 govern this dispute and require a sustaining award.

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