

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41215
Docket No. SG-41033
12-3-NRAB-00003-090409**

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 C. J. Fatora, M. W. Gercken, and T. H. Stone, for 12 hours each at the overtime rate of pay account Carrier violated the current Signalmen’s Agreement, particularly Rules 15 and Side Letter 10 (dated May 16, 1999), when it used junior employees instead of the Claimants for overtime service on February 17, 2008, and denied the Claimants the opportunity to perform this work. Carrier’s File No. 11-21-671. General Chairman’s File No. 10-MW-08. BRS File Case No. 14268-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, the Claimants were Signal Testmen on the Milwaukee District. Claimants T. H. Stone and C. J. Fatora held prior rights on the Milwaukee District. No similar assertions were made on the property or before the Board with respect to Claimant M. W. Gercken.

On Sunday, February 17, 2008, the Carrier assigned Signal Testmen to perform two year tests at the B-12 Interlocking located on the Milwaukee West Line, near the CP/SOO Bensenville Yard on the Milwaukee District. Claimant Stone was senior to all employees who worked. Claimants Fatora and Gercken were senior to all employees who worked except one (Testman J. E. Sobieszczyk). According to the Carrier, the overtime performed was in connection with the assigned Testmen's regular positions performing scheduled FRA testing and during the week prior to the date in dispute, the Testmen assigned the overtime had been working at the location where the disputed overtime was performed on February 17, 2008. There is no showing that the Claimants were not qualified to perform the work.

As in Third Division Award 41188, 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 . . . [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.

Because they held prior rights on the Milwaukee District, under Award 41188, Side Letter No. 10 and Public Law Board No. 5565, Award 34, Claimants Stone and Fatora should have received the overtime. The claim is therefore sustained for those two Claimants.

However, Claimant Gercken is not entitled to relief under this Award. According to the record, Claimant Gercken did not hold prior rights on the Milwaukee District. The Board has previously denied claims made on behalf of senior employees claiming overtime on non-scheduled days for work that was associated with the assigned junior employees' regular work assignments on the days preceding the overtime assignment where the senior employees did not hold

prior rights on the district where the overtime work was performed or were otherwise associated with the work. See the Board's decision in Third Division Award 41213 quoting Third Division Award 41199:

“However, the Board has previously addressed Claimant Shreffler’s entitlements to overtime work on a district where he did not hold prior rights. In Third Division Award 41199 the Board found:

‘However, according to the Organization’s September 11, 12 and December 19, 2007 letters as well as in its Submission at Page 3, only Sorensen held prior rights on the Rock Island District. There is no showing that Sorensen was unqualified to perform the work. Therefore, Sorensen was entitled to the overtime opportunities based on his prior rights on the Rock Island District.

There is no similar assertion in the record developed on the property or asserted before the Board for Shreffler as a prior rights employee on the Rock Island District. Notwithstanding Shreffler’s otherwise greater seniority, we find no violation of the relevant Rules for the Carrier’s decision to not assign the overtime opportunities to Shreffler who was not associated with the work during the period preceding the overtime assignment.

In terms of a remedy, Sorensen shall be made whole for any lost overtime opportunities on the dates set forth in the claim. However, if Sorensen earned overtime on those dates, those amounts shall be offset against the Carrier’s liability.’

For the same reasons stated in Award 41199, only Claimant Sorensen is entitled to the remedy as provided in Award 41199. Because Claimant Shreffler did not hold prior rights on the Rock Island District, he is therefore not entitled to relief and the claim as to Claimant Shreffler must be denied.”

Because we find that Claimant Gercken was not entitled to perform the overtime work in question, the Board need not address the Carrier’s argument in its

May 15, 2009 letter that Gercken was also not entitled to the claimed overtime in this case because he also worked overtime on February 17, 2008.

In terms of a remedy, Claimants Stone and Fatora shall be made whole for any lost overtime opportunities on the date set forth in the claim. However, if Claimants Stone and Fatora earned overtime on that date, those amounts shall be offset against the Carrier's liability. The claim is denied for Claimant Gercken.

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.