

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41216
Docket No. SG-41097
12-3-NRAB-00003-090478**

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, for 24 hours overtime, account Carrier violated the current Signalmen’s Agreement, particularly Rules 15 and Side Letter 10 (dated May 16, 1999), when it used a junior employee instead of the Claimant for overtime service on April 5 and 6, 2008 and denied the Claimant the opportunity to perform this work. Carrier’s File No. 11-21-683. General Chairman’s File No. 11-MW-08. BRS File Case No. 14295-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 Claimant was a Signal Testman on the Milwaukee District. The Claimant also held prior rights on the Milwaukee District.

Initially, according to the Organization, on Saturday, April 5 and Sunday, April 6, 2008, the Carrier assigned Signal Testman M. W. Gercken, to perform overtime work. This claim followed because, according to the Organization, Gercken did not hold prior rights on the Milwaukee District and the Claimant – rather than Gercken – should have been assigned the overtime work.

According to the Organization's May 31, 2008 letter, Gercken replaced an electric lock at the GP Switch in Elgin on April 5, 2008 and worked with the signal gang wiring and testing the intermediate signal between Elgin and Almora on April 6, 2008.

According to the Carrier's June 25, 2008 letter, Gercken was assigned overtime at the GP Switch on the Milwaukee District on the weekend in question because he was working on that assignment on the Thursday and Friday prior to the overtime assignment and, therefore, continued with his regular assignment with the overtime.

According to the Carrier's October 16, 2008 letter, Gercken performed no work on April 6, 2008 and on that date the Claimant was not available because the Claimant performed 12 hours' overtime at Roundout (from 6:00 A.M. to 6:00P.M.).

In its June 25, 2009 letter, the Organization withdrew its claim for April 6, 2008 ("With regard to your statement that no work was performed on Sunday April 6, 2008, we acknowledge the statement and withdraw the hours claimed for April 6, 2008."). However, with respect to the claim for hours on April 5, 2008, according to the Organization in that letter, "[t]he hours claimed for the date of April 5, 2008 remain." In its Submission to the Board at Page 5, the Organization confirmed its withdrawal of the claim for April 6, 2008.

In its July 3, 2009 letter, the Carrier described the work performed by Gercken:

"... To summarize the facts in this case, the Carrier assigned Signal Testman Gercken to work with the Elgin Signal Maintainer to replace and test an electric lock in Elgin, on the Carrier's Milwaukee West Line, in the Milwaukee Engineering district. This work was begun by Testman Gercken during his regularly scheduled workweek, beginning Tuesday, April 1, 2008, and completed on Saturday, April 5, 2008[8]. ..."

There is no contention that the Claimant was not qualified to perform the overtime 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.

By its June 25, 2009 letter, the Organization withdrew its claim for April 6, 2008, but continued its claim for April 5, 2008. Due to the Claimant’s prior rights on the Milwaukee District and the fact that Gercken had no prior rights on that district, pursuant to the above authority, the Claimant was entitled to the overtime work on April 5, 2008.

In terms of a remedy and because the claim for April 5, 2008 has merit, the Claimant shall be made whole for any lost overtime opportunities on April 5, 2008. However, if the Claimant earned overtime on that date, 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.