

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41403
Docket No. SG-40601
12-3-NRAB-00003-080445**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific (UP):

Claim on behalf of R. J. Hansen, for three hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 16, when it used a junior employee instead of the Claimant on a trouble call at CP 214 on the Nampa Sub on May 11, 2007 and denied the Claimant the opportunity to perform this work. Carrier’s File No. 1476256. General Chairman’s File No. UPGCW-16-1457. BRS File Case No. 13992-UP.”

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.

This claim protests the failure of the Carrier to call the Claimant for a trouble call on May 11, 2007 when the incumbent was unavailable, based upon his greater seniority than the Signal Maintainer called to perform this emergency overtime switch repair work. It relies upon the following Agreement language to support the Claimant's entitlement to the work assignment:

"RULE 16 - SUBJECT TO CALL

A. Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and will notify the person designated by the management of their regular point of call. When such employees desire to leave such point of call for a period of time in excess of two (2) hours, they will notify the person designated by the management that they will be absent, about when they will return, and, when possible, where they may be found. Unless registered absent, the regular assignee will be called, except when unavailable due to rest requirements under the Hours of Service Act, as amended by Public Law 94-348.0

* * *

Note 2: The Local Chairmen and Local Management may agree to establish lists or other means in which to determine which employees are to be called under this rule, subject to review by the General Chairman and Labor Relations."

The Organization argues that seniority is the cornerstone of the Agreement and must have privilege, citing Third Division Awards 19758, 29536 and 33909. It asserts that the Claimant was senior to the Signal Maintainer called, was available, more experienced, and at least as close to the trouble call, relying upon a written statement of the Claimant that although he works on a different territory, he lives two miles from the beginning of this district and closer to the railroad than the employee assigned (based upon their addresses). The Organization contends that the Carrier failed to prove otherwise. The Organization alleged that the Supervisor

refused to sit down with the Local Chairman to agree upon a call list, and questioned why the Carrier would care who is called as long as the senior employee is qualified and available to handle the trouble call.

The Carrier contends that Rule 16 obligates it to contact the regular assignee on the territory for a trouble call, but is silent regarding who may be called next if the regular employee is unavailable, leaving to the Carrier the ability to determine who is to be the alternate with due regard to operational requirements, citing numerous Awards including Third Division Awards 37100 and 37218. It notes that there is no reference to seniority within Rule 16, and there was no agreed upon call list in this case. The Carrier points out that trouble calls are emergency situations, and it has no obligation to allow a dangerous condition to continue while it calls a senior Maintainer from a different territory. It stresses that the employee assigned was available and from the same territory, and there is no proof that the Claimant was closer to the trouble call than the employee assigned, citing precedent requiring that claims be denied if there are irreconcilable disputes of fact, including Third Division Awards 33487 and 33895, as well as Public Law Board No. 2960, Award 154. The Carrier specifically distinguishes the cases relied upon by the Organization and argues that the Organization failed to sustain its burden of proving a violation of the Agreement.

A careful review of the record convinces the Board that the Organization has not met its burden of establishing a violation of the Agreement in this case. Like our decision in Third Division Award 40587 involving the same Claimant, this case involves a trouble call that required immediate action, and its resolution is based upon the clear language of Article 16A, establishing that absent an agreed upon call list, management has the prerogative to choose who will be called once the incumbent is found to be unavailable. The finding that seniority is not a governing requirement in this Rule once the Carrier has fulfilled its responsibility to the incumbent set forth in Third Division Award 40587 is equally applicable herein. See also, Third Division Awards 37100 and 37218. The fact that the Claimant alleges that he is closer to the district than the junior employee does establish his proximity to the trouble call, nor impose an obligation on the Carrier not found in the Agreement. The Organization has not met its burden of proving that the Carrier violated the Agreement by failing to call the Claimant from a different territory for the trouble call in question.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of July 2012.