

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41616
Docket No. SG-41399
13-3-NRAB-00003-100318

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 Railroad:

Claim on behalf of M. J. Hymel, Jr., for four hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 13, and 16, when it used a junior employee instead of the Claimant for overtime service on his assigned territory at Shepard Dr. MP 364.75 on the Terminal Subdivision, and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 1519749. General Chairman’s File No. S-13, 16-1006. BRS File Case No. 14438-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.

The facts at bar are as follows. The Claimant was the senior employee. On March 9, 2009, the Carrier permitted a junior signal employee (Gregory) to work overtime from 11:00 P.M. to 3:00 A.M. on the Terminal Subdivision. The Organization argues that this was a violation of Rules 13 and 16 of the Agreement, because the Carrier failed to contact the Claimant in accordance with the existing call list and the established procedures on the property. Rule 13 states, in pertinent part, that: "Where gang men are required to work overtime, the senior man in a class in the gang will be given preference to such overtime work." Rule 16 (Subject to Call) states, in pertinent part, that:

"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 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"

The Organization argues that consistent with the Rules, the Claimant was the senior employee and clearly available to perform the overtime service.

The Carrier argues that it followed the applicable Agreement Rules. There was no call for overtime. No employee was subject to call (Rule 16). The junior employee worked his Gang No. 3979 and continuous with his work, he stayed on duty for four hours of overtime. The Claimant worked Gang No. 2658 and also continued on duty for two hours after his normal shift to continue work which flowed from what he had been performing all day. The Carrier contends that the Rule was followed without any violation inasmuch as the employees worked different gangs without a call out.

The Organization argues throughout this claim that the HUB has 13 Signal Maintainers assigned to the same territory and the call list has always assigned overtime to the senior employee. It provided a signed letter as proof. Further, the Claimant is assigned to the very same territory. Labor Distribution Reports submitted by the Carrier to indicate different Gangs are not on point, because both employees are working the same territory. The Organization argues that all overtime has been from the call list including, "trouble calls, continuous work, all overtime"

The Board finds that Rule 13 has specific language referring to Gangs, not the HUB. The Board also notes that Rule 16 refers to employees "Subject to Call" referring to "emergencies" and also that the "regular assignee will be called." The Board is well aware of the importance of seniority, but in this instance, the work performed was that which was continuous with Gregory's regular assignment and not the Claimant. There was no evidence of anyone "called" for the overtime (Third Division Award 37705). The Carrier argued that this type of overtime has been historically assigned to the employee who performed the work during his regular assignment. No evidence was provided by the Organization to prove that continuous overtime on a regular assignment has ever been "called" by seniority. In the absence of such proof and given the language of the cited Rules, the claim must be denied.

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 24th day of April 2013.