

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41617
Docket No. SG-41423
13-3-NRAB-00003-100353**

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 G. L. Wallace and M. R. Paleo, for 16 hours each at the time and one-half rate and 90 hours each at the double-time rate of pay, and T. J. Kenyon and J. B. Wittrock, for 31.5 hours each at the time and one-half rate and 64 hours each at the double-time rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 13, 15 and Side Letter No. 1 (dated February 1, 2000) when it failed to compensate Claimants Wallace and Paleo for being held on duty for trouble calls on June 19, 20, 21, 22 and 23, 2009, and Claimants Kenyon and Wittrock for being held on duty for trouble calls on June 25, 26, 27, 28, and 29, 2009, after Claimants performed their regularly assigned 40 hour workweek. Additionally, Claimant Wallace to be given his truck back and returned to his four day, ten hour, work schedule. Carrier compounded this violation by failing to comply with the time limit provisions of Rule 69. Carrier’s File No. 1520946. General Chairman’s File No. UPGCW-15-1639. BRS File Case No. 14423-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.

On the property, the Organization raised both procedural and merit issues with regard to the alleged changes to the Claimants in assignments, weekend coverage and trucks, as well as other problems related to the Manager Signal Maintenance. The Organization alleges that in all respects, the Carrier failed to properly abide by Agreement Rule 69 with regard to procedure and Rules 13 (Overtime; Subject to Hours of Service Act) 15 (Calls) and Side Letter No. 1 dated February 1, 2000. The Carrier detailed a point-by-point rebuttal and denial to all issues with regard to the merits.

As in all claims brought before the Board, we must first consider procedural issues raised by either party. In this instance, the Organization argued that the Carrier violated Rule 69 (Claims and Grievances). Part A of that Rule states, in pertinent part:

“All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim be disallowed, the Carrier will, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance will be allowed as presented, but this will not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.” [Emphasis added]

In this case at bar, the Organization alleged that in pursuit of the claim the Organization had appealed the grievance by letter dated September 15, and received by the Carrier on September 17, 2009 at 4:22 P.M. The Carrier denied the appeal by

letter postmarked November 17, which was received on November 23, 2009. The Organization maintains that this was in violation of Rule 69, supra, in that it was beyond the 60 days required by the Agreement. As further stated in Part C of Rule 69, "The requirements outlined in paragraphs A and B, pertaining to appeal by the employee and decision by the Carrier, will govern in appeals taken to each succeeding officer" There is no rebuttal on the property by the Carrier to the time limit allegation. It stands as fact. Thus, the Board finds the violation proven.

As such, the Board has no alternative but to rule on procedural grounds and disregard the merits of the dispute. Accordingly, as per Rule 69, "the claim or grievance will be allowed as presented"

AWARD

Claim sustained.

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 24th day of April 2013.



3-41618

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41618
Docket No. SG-41471
13-3-NRAB-00003-100297

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. W. Durham, for 151.5 hours at his overtime rate of pay, account Carrier violated the Current Signalmen’s Agreement, particularly Rules 1 and 16, when it called another employee instead of the Claimant to refuel generators on his assigned territory from February 2, 2009, through February 16, 2009, and denied the Claimant the opportunity to perform this work. Carrier’s File No. 1518637. General Chairman’s File No. S-1, 16-1000. BRS File Case No. 14421-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 Carrier responded to a major electrical power outage following a storm in parts of Missouri and Arkansas by putting out and refueling generators to restore the signal system. There is no dispute that the January 26 and 27, 2009 storm constituted an “emergency” disrupting railroad traffic and the signal system. Nor is there any dispute that because commercial power did not resume, the generators backing up the system had to be constantly refueled.

The dispute herein, is that once the systems were operational, the Organization maintains that the emergency ended. The Carrier asserts that this was a continuing emergency and it therefore had the right to use a junior employee on the Claimant’s territory to refuel the generators. The Organization argues that it did not file a claim while a true emergency existed, but only after the emergency had ended: February 2 through February 16, 2009. Signal forces installed the generators and refueled them around the clock during the emergency, but once the system was fully functional, the work belonged to the Claimant. It was on his assigned territory. The Carrier’s use of a Relief Maintainer from another gang to work overtime on those generators violated the Claimant’s rights. The Claimant was denied a work opportunity on his territory. These generating systems are clearly covered by the Scope Rule as supported by Third Division Award 37795. The “current generating systems” refer to the generators that continue to supply power to the signal systems. The Carrier’s attempt to extend the “emergency” so as to permit Scope protected work to be performed by a junior employee, rather than the regular assignee (the Claimant) violates Rule 16 of the Agreement (Third Division Awards 33909 and 29536). The Organization maintains that this work is covered by the Scope Rule of the Agreement.

Conversely, the Carrier argues that the emergency was continuing due to the fact that there was no restoration of power. That is why the generators were attached to the signal system and their maintenance was required inasmuch as no normal power had been restored. More importantly, although this was an emergency permitting all available signal forces to work wherever necessary, the portable generators are not covered by the Scope Rule of the Agreement, because they are not “appurtenances and apparatus” of the signal system as covered by the Scope Rule. The Carrier contends that there is a clear delineation of exclusive work belonging to the Signal forces and this work is not the exclusive work of the Signal craft.

The Board carefully reviewed the on-property record and concludes that there is no Agreement language that explicitly includes the addition of temporary generators. These portable generators do not fit within the Scope Rule. There is

nothing in this full record to show any factor different from two other Awards on this property and between these parties which concluded a lack of any language or exclusivity that would secure this work to the employees. In Public Law Board No. 7270, Award 1, the Board found that temporary generators “sit outside the signal system because they are merely replacing commercial power, which is on the other side of “the necessary service connections.” The Award found that they are not an “appurtenance” to the signal system. Further, Third Division Award 41131 similarly concluded over the same basic facts, that there was no showing that the Organization had historically and exclusively performed the work, to “the exclusion of other employees or contractors.”

The Board carefully reviewed the Organization’s reliance on Third Division Award 37795. That Award is not on point. It is a similar dispute, but with another Carrier and another Scope Rule and there is no showing in this record of any similarity of Agreement language or historical performance to the exclusion all others in the use of only Signal forces.

In the record that exists on this property and over this dispute, the Carrier’s arguments must prevail. The Organization has not met its burden to demonstrate that the Scope Rule covers portable generators and that they are within the exclusive control of Signal forces.

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.



3-41619

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41619
Docket No. SG-41486
13-3-NRAB-00003-110049

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (**Brotherhood of Railroad Signalmen**
(**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 J. A. Rand, for one and one-half hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Rules 13 and 80, when it used a junior employee instead of the Claimant for overtime service on September 2, 2009, and denied the Claimant the opportunity to perform this work. Carrier's File No. 1524390. General Chairman's File No. UPGCW-13-1646. BRS File Case No. 14418-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 Claimant was the senior employee. He requested the right to perform overtime the day before the work was to be performed. The Claimant stated that he volunteered to perform the work because it would be performed the following morning and then, "could return to my duty's [sic] as Lead Signaller when the rest of the gang came to work at 6:30 AM." The Organization argues that Rule 13 was violated, as it states 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."

The Carrier denied the claim on the basis the Claimant was not working in the class needed for the work. The Claimant was a Lead Signaller which under the Agreement supervised work; not performed it. As Lead Foreman on Gang No. 7022, his job was to assure that the gang did the assigned work for the day; not work a different gang, in a different class. The Carrier further argued that the gang was split and the Claimant was not the regular employee performing the work for which overtime was required.

The Board studied the record evidence, as well as the Award support presented by both parties. The Claimant had greater seniority. The Organization argued that the Claimant, as the senior employee, was entitled to the planned overtime in preference to the junior employee assigned. The facts are that the Claimant was a Lead Signaller working one gang, while the work planned required a Signal Helper to work with a cutover on another gang. The work was given to the junior Assistant Signaller (J. Sanderson) to work with Electronic Technician N. McLean as a Helper with the cutover. Manager Allman stated that:

"E. T. Mclean needed an assistant to help him with his cut over. Mclean was split away from the gang and working the cutover. The rest of the gang was miles away. Mr. Rand [Claimant] is a lead signaller and needs to be working with the gang in his lead position."

There is no denial that the gangs were split and not working in the same area. There is no denial by the Organization that the work performed was not on the Claimant's gang, but on the gang worked by the junior employee. There is no evidence in this record that the practice would be to work the senior employee on a

different gang to which he was not assigned in a different class over a junior employee. Nor is there any Rule contested that would provide the requirement of the Carrier to rearrange the work wherein the Claimant might have the right to return to his gang and class after performing the cutover. Based on the evidence of record, the Board must find that the Organization has not sustained its burden of proving a violation of Rule 13 of the Agreement (Third Division Awards 34087, 37535 and 37867).

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.