

**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 Signelman 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 Signelman 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 Signelman 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 Signelman (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 signelman 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.