

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41803
Docket No. SG-40155
13-3-NRAB-00003-070397**

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Wheeling & Lake Erie Railway Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Wheeling And Lake Erie:

Claim on behalf of J. D. Riedel, for four hours at his overtime rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 14, when it used two junior employees instead of the Claimant for overtime service on the Solon Branch on June 10, 2006, and deprived the Claimant of the opportunity to perform this work. General Chairman’s File No. 06-013-MOFW-14. BRS File Case No. 13791-W&LE (MofW).”

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 Saturday, June 10, 2006, between 11:00 A.M. and 3:00 P.M., the Carrier utilized Section Foreman G. S. Ott and Truck Driver B. K. Cooper to repair a switch stand on the Solon Branch. These employees had already been on duty for 3.5 hours at the time they were sent to repair the switch. Because this was not their regularly scheduled work day, they were compensated for all of their time at the overtime rate of pay. The Carrier asserts that the repair of the switch required immediate action to facilitate the movement of trains.

The Organization filed this claim on behalf of Track Inspector J. D. Reidel, who is senior to both Ott and Cooper, contending that he should have been called out to perform the work in question based upon his seniority. The Claimant performed no service on the date of claim. It notes that he lives only five minutes from where the switch is located. According to the Organization, the Claimant was number 14 on the Call Out List, while Ott was number 27 and Cooper was not on the list. The Organization argues Rule 14 – Subject to Call & Calls supports its claim. That Rule reads, in pertinent part, as follows:

“B. Overtime Regularly Assigned: Employees will, if qualified and available, be given preference for overtime work, including calls, on work ordinarily and customarily performed by them during the course of their work week or day in the order of their seniority. (In emergencies, consideration will be given to employees that can respond promptly.)

* * *

“E. Call Out List: Employees desiring to perform work in addition to their normal assignment will submit a request (Call Out List Form) to be placed on the call out list. Employees on the call out list will be called in seniority order and will be required to report for service if contacted. For the purpose of this Rule, seniority order is defined as the employee with the most seniority in the class needed. Employees on the call out list will be used for call outs until the list is exhausted.”

The Carrier raises several defenses to the claim. It first asserts that Ott and Cooper were already on duty, and were not “called out” for the work in question. Secondly, it submits that this was emergency work inasmuch as the damaged switch stand impeded the movement of trains. Therefore, the Carrier contends that it was privileged to use employees who could respond to the emergency promptly, regardless of their seniority. Although the Claimant lived only five minutes from the switch, the Carrier asserts that he would have had to travel to Akron to pick up a truck before being able to perform the work. Next, the Carrier asserts that the work performed by Ott and Cooper was the type of work they regularly perform on their assignments, whereas the repair of switch stands is not a part of the regular duties of a Track Inspector. Finally, the Carrier notes that the Claimant was not the most senior employee that day, and was not, therefore, a proper claimant. Had the Carrier called out other employees to perform the work in question, it contends that it would have called employees senior to him.

The Carrier’s most compelling argument is its reference to Rule 14(B) and its provision that employees will be given preference for overtime work on the work they ordinarily and customarily perform during the course of their workweek or day. The Organization does not dispute that the work performed was of the nature ordinarily and customarily performed by Ott and Cooper on their regular assignments as a Section Foreman and a Truck Driver, respectively. More significantly, the Organization has not shown that the work in question was a part of the Claimant’s Track Inspector duties.

In Third Division Award 36295, the Board considered a “Preference for Overtime” Rule that provided:

“(a) Employees will, if qualified and available, be given preference for overtime work, including calls, on work ordinarily and customarily performed by them, in order of their seniority.”

In denying the claim of senior employees, the Board stated, “While the Claimants may have been available and qualified to perform the drywalling work, it was not the type of work which was ordinarily and customarily performed by them.” Rule 14(B)’s addition of the phrase “during the course of their work week or day” adds clarity as to the intent of the parties who drafted it. It is not sufficient

that the work constitute duties that might be performed by the employee, nor that the employee be qualified to perform the work. Under Rule 14(B), the senior employee must also demonstrate that the work is actually performed with regularity on his job. In the absence of such proof, the Board cannot find that the Claimant was entitled to the work in question. It is not necessary, therefore, to address the other arguments raised in this case. The Agreement was not violated by the Carrier's use of Ott and Cooper for the disputed overtime work.

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 17th day of December 2013.