

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 41821
Docket No. SG-41164
14-3-NRAB-00003-100004

The Third Division consisted of the regular members and in addition Referee Michael Capone when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Northeast Illinois Regional Commuter Railroad
(Corporation (Metra)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Railroad Corp. (Metra):

Claim on behalf of R. A. Mohrbacher, for 12 hours overtime pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 15 and 26, when it used junior employees instead of the Claimant for overtime service on Tuesday, May 13, 2008 through Wednesday, May 14, 2008, and denied the Claimant the opportunity to perform this work. Carrier’s File No. 11-21-692. General Chairman’s File No. 205-MW-08. BRS File Case No. 14323-NIRC.”

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 July 9, 2008, the Organization filed this claim asserting that the Carrier violated Rules 15 and 26 of the Agreement when it assigned signal employees, who were junior to the Claimant in seniority, to overtime related to the removal of a tree from a pole line in Rondout, Illinois, on May 13 and 14, 2008. There is no dispute that the junior employees worked overtime to remove the tree from the pole line on the dates referenced herein.

The Claimant is assigned to Signal Gang No. 6, headquartered in Spalding, Illinois. The record indicates that Franklin Park Gang No. 9 was called to assist the Rondout Signal Maintainers in removing the tree because it had a boom truck. The Western Avenue Gang, which also had a boom truck, was assigned to the location as well. The claim is premised on the fact that Gang No. 9 employees who were junior to the Claimant were used to perform the overtime service. All three of the gangs are headquartered on the Milwaukee District.

In a letter dated September 2, 2008, the Carrier denied the claim asserting that a boom truck was needed and, therefore, the use of a driver holding a Commercial Driver's License (CDL) was required. Because the Claimant did not possess a CDL, the Carrier contends that it did not violate the Agreement by using the junior employees.

The on-property record indicates that additional issues were raised by both parties and that the final claim declination was issued by the Carrier on September 3, 2009.

The Organization argues that the location at which the tree was in the pole line was in the Rondout Signal Maintainer's territory, and therefore, because there was no disruption of train service, the overtime was "incidental" and would normally be covered in seniority order. While the Organization acknowledged that the size of the tree required the use of a boom truck, it maintains that the need for additional assistance in removing the tree obligated the Carrier to use the Signal Department Seniority Roster. The Organization notes that the Claimant is No. 65 on that roster, whereas the members of Franklin Park Gang No. 9 hold position Nos. 67, 128, and 155. Accordingly, argues the Organization, the Claimant should

have been called first. The Organization further claims that the additional work required was “miscellaneous” and, therefore, the overtime should have been called in seniority order. It supports its contention by referring to a document circulated by the Engineering Department which described different overtime scenarios, one of which is similar in nature to the dispute presented here and is referred in the document as “miscellaneous work.” The Organization cites Third Division Awards 5346, 14161, 30833 and 33909 in support of its position that the Board has previously held that senior employees are to be given preference for overtime assignments like the one in dispute here.

Conversely, the Carrier contends that the Organization has not met its burden to prove a violation of Rules 15 and 26 as claimed. The Carrier avers that the Claimant is not part of a group of employees who customarily work together and, therefore, was not entitled to the overtime in question in accordance with Rule 15. Further, argues the Carrier, both gangs with the boom trucks were assigned to remove the tree because of their proximity to the location and as provided for in the May 16, 1999 Letter of Agreement (LOA) for Calling Gangs for Overtime Service.

The Carrier further asserts that the work in question does not constitute “incidental” or “miscellaneous” work that requires that overtime be called in seniority order from the roster. The need to remove the tree from the pole line required boom trucks that the Claimant’s gang did not have. The Carrier also argues that Claimant’s Gang No. 6 was not called to service and, therefore, he was not entitled to perform overtime service simply because employees junior in seniority to him were part of Gang No. 9.

The Carrier relies on Third Division Award 28490, where Rule 15 was found to support the Carrier’s assignment of overtime to employees who customarily work together instead of using the seniority roster. The Carrier points out that Award 28490 was issued before the LOA was adopted and, therefore, the LOA further enhances its position that it did not improperly assign overtime on May 13 and 14, 2008.

The relevant contract language applicable to the dispute is as follows:

Rule 15, in pertinent part, reads:

“When overtime is required of a part of a group of employees who customarily work together, the senior qualified available employees of the class involved shall have preference to such overtime if they so desire.”

The LOA, in pertinent part, reads:

- “(a) When overtime service is required, the gang which performed the work during normal working hours will be called first.**
- (b) If additional personnel is needed, other signal employees will be called in seniority order from the gang (gangs if more than one headquartered at the same location) headquartered nearest to the gang outlined above, working on the same district.”**

The Board finds that the Organization failed to submit substantial evidence to support its contention that the Carrier violated Rule 15 and/or 26 as claimed. On the contrary, the record contains sufficient proof that the facts and circumstances that occurred on May 13 and 14, 2008 permitted the Carrier to use Gang No. 9 as well as the Western Avenue Maintenance Gang on overtime instead of assigning overtime to the Claimant based on his seniority.

Irrespective of whether there was an interruption in train service, the need to remove the tree from the pole line required the use of a boom truck. The record does not provide adequate support that the overtime required was “incidental” or “miscellaneous.” The Carrier is not limited, under these specific circumstances, in assigning the appropriate resources to address a potentially hazardous situation.

The need for an additional boom truck is within the Carrier’s discretion. The applicable provisions of Rule 15 and the LOA govern how it assigns overtime when using gangs which customarily perform this type of work. The Claimant’s gang does not have a boom truck and cannot be considered part of a group of employees who customarily perform the type of work required on May 14, 2008. In addition, it is undisputed that Gang No. 9 and the Western Avenue Maintenance Gang were closer in location to each other than was the Claimant’s gang and, therefore, were properly called for overtime service as provided for in the LOA.

The Board finds that Award 28490 provides support for our conclusion that Rule 15 applies to the nature of the work performed by the two gangs that had boom trucks. In that Award the Board observed that “. . . the term ‘Gang’ . . . means that it is a group of employees who customarily work together.” The section of the Rule referred to by the Board, and applicable here, distinctly reserved the overtime in question to Gang No. 9 and the Western Avenue Maintenance Gang, even where more senior employees in the Department are deprived of the opportunity to work.

Based on the foregoing, the Board finds that the on-property record lacks the requisite substantial evidence that the Carrier violated Rules 15 and 26 of the parties’ Agreement. Accordingly, the instant 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 20th day of March 2014.