

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41823
Docket No. SG-41288
14-3-NRAB-00003-100152

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 W. J. Van Kampen and M. E. Kendryna, for 10 hours pay each at their overtime rates, account Carrier violated the current Signalmen’s Agreement, particularly Rule 15, when it used junior employees instead of the Claimants for overtime service on October 26, 2008, and denied the Claimants the opportunity to perform this work. Carrier’s File No. 11-21-710. General Chairman’s File No. 40-MW-08. BRS File Case No. 14382-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 December 22, 2008, the Organization filed this claim asserting that the Carrier violated Rule 15 of the Agreement when it assigned signal employees, who were junior to the Claimants in seniority, to overtime service related to work on crossing gates in the South Chicago area on October 26, 2008. There is no dispute that the junior employees worked overtime at the crossing gates on the dates referenced herein.

The Claimants are assigned to a signal gang headquartered in Tinley Park, Illinois. The case record indicates that the junior employees held Vacation Relief positions headquartered at KYD.

In a letter dated February 2, 2009, the Carrier denied the claim asserting that junior employees C. L. Cross and K. Ferry had performed work related to the involved crossing gates in South Chicago "during normal working hours." Therefore, stated the Carrier, they were entitled to be "called first" as provided for in the Letter of Agreement (LOA) dated May 16, 1999 between the parties. The denial letter also stated that because the Claimants ". . . were not assigned to the gang performing the work during regular working hours, and this was not miscellaneous overtime, no violation of the Agreement occurred."

The on-property record reveals that additional issues were raised and that the Carrier's final decision was rendered on January 28, 2010.

The Organization argues that the Claimants were part of the signal gang headquartered at Tinley Park and should have been called for the overtime in question on October 26, 2008 because it constituted "miscellaneous" work that must be assigned by seniority. The Organization contends that the Carrier's assertion that the junior employees as Vacation Relief Maintainers were part of the gang that was entitled to the overtime pursuant to Rule 15 and the LOA is not established in the record. It also states that the Carrier's reliance on the vacation relief Rule in the Agreement is taken out of context and does not abrogate the parties' seniority provisions related to the assignment of overtime.

The Organization asserts that the crossing gate work performed on October 26 was "new work" and not a continuation of the work performed during "normal working hours." Therefore, it constituted "miscellaneous" overtime requiring that the "standards of seniority" must apply. It supports this conclusion by citing Third

Division Awards 30833 and 33909. The Organization also argues that the unambiguous language of Rule 15 required the Carrier to assign the overtime to the Claimants.

Conversely, the Carrier contends that it did not violate Rule 15 because the Claimants are not part of the signal gang that “customarily work[s] together.” The Carrier also argues that the signal gang headquartered at KYD performed the crossing gate work during the regular workweek and, therefore, the LOA requires that overtime related to the work be assigned to the same gang. Because Vacation Relief Maintainers Cross and Ferry were assigned to the signal gang headquartered at KYD when not “relieving” – filling an absence created by a vacation – and performed work at the crossing gates “during regular working hours,” they were entitled to the overtime pursuant to Rule 15 and the LOA.

The Carrier relies on Supplement No. 2 - Memorandum of Agreement on Relief Positions - to support its contention that the vacation relief junior employees were properly assigned to the signal gang from the KYD headquarters when not “relieving.” It provided two months of work records for Cross and Ferry and alleged that the documents confirm that they were “part of a group of employees who customarily work together” and that they were assigned “during regular working hours” to perform crossing gate work in South Chicago.

The Carrier cites Third Division Awards 5346, 28490 and 39491 in support of its contention that it did not violate Rule 15. It argues that the Awards buttress its conclusion that the Claimants have no claim to the October 26, 2008 overtime work as alleged herein.

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.”

Supplement No. 2 - Memorandum of Agreement on Relief Positions – reads, in pertinent part, as follows:

- “4. In the event there is a period when the Vacation Relief Man has no vacation relief assignment, he may be used to perform other relief assignments and other such signal work as assigned.”

The Board finds that the Organization failed to submit substantial evidence to prove that the Carrier violated Rule 15 as claimed. The case record contains sufficient proof that the circumstances surrounding the work performed on October 26, 2008, permitted the Carrier to use the junior employees, who were Vacation Relief Maintainers assigned to the signal gang headquartered in KYD. There is no dispute in the record that the Claimants were not “part of a group of employees who customarily work together.” There is nothing in Rule 15 that would give the Claimants any seniority preference to the work in question.

The record does not provide any evidence that the overtime required was “miscellaneous” and that, therefore, the “standards of seniority” should apply. Nor is there anything in the record that supports the assertion that the overtime assignment constituted “new work” and was not related to the work that the signal gang from KYD had performed on the crossing gates during the period leading up to October 26, 2008.

The Board here finds that Rule 15 and the LOA do apply to the junior employees. The record contains substantial evidence produced through two months of “Engineering Department Work Reports” that proves that the junior employees worked with the signal gang headquartered in KYD on a regular basis when not “relieving.” As such, the junior employees were “part of a group of employees who customarily work together” and were covered by Rule 15. The records also show that the junior employees performed work related to the crossing gates in South Chicago with the signal gang “during normal working hours” during the workweek leading up to October 26, 2008. Therefore, they were entitled to the overtime work in accordance with the LOA.

The fact that Cross and Ferry may have performed other functions as well is not inconsistent with their positions as Vacation Relief Maintainers. The documentary evidence presented to the Board is sufficient to show that the junior employees were assigned to the signal gang in accordance with the provision in the Agreement pertaining to relief positions, specifically where it provides that they can be used for "other such signal work as assigned." There is nothing in the record that impugns the ability of the Carrier to assign Vacation Relief Maintainers to a signal gang when not relieving.

The Board finds that Award 39491, in particular, as well as Awards 28490 and 5346, provide support for our conclusion that the Rule 15 does not give the Claimants assignment rights to the overtime in dispute.

Based on the foregoing, the Board finds that the record before the Board lacks the requisite substantial evidence that the Carrier violated Rule 15 of the parties' Agreement. Accordingly, 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 20th day of March 2014.