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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41824
Docket No. SG-41289
14-3-NRAB-00003-100159**

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 J. Espana and M. S. Musgrave, for 21 hours each at their overtime rates of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 15, when it used junior employees instead of the Claimants for overtime service on November 8 and 9, 2008, and denied the Claimants the opportunity to perform this work. Carrier’s File No. 11-21-708. General Chairman’s File No. 43-MW-08. BRS File Case No. 14386-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 January 3, 2009, the Organization filed this claim asserting that the Carrier violated Rule 15 of the Agreement on November 8 and 9, 2008 when it assigned Signal Department employees, who were junior to the Claimants in seniority, to overtime work in connection with the installation, maintenance, and adjustment of snow melters for switches at the B17 plant on the Milwaukee District. The Claimants are Milwaukee District Signal Testmen headquartered at Franklin Park.

In a letter dated February 2, 2009, the Carrier denied the claim asserting that on the dates in question, the junior employees who worked on the crossovers at B17 during the weekend began the work during their regularly scheduled hours and that, therefore, the overtime was continuous from their regular assignment.

The Organization argues that the work performed by the junior employees on overtime was "miscellaneous" and should have been assigned by seniority on the district based on the "Signal Department Seniority Roster." The Organization contends that on the weekend of November 8 and 9, 2008, the Carrier assigned junior employees from Signal Gang No. 6 to perform work on the snow melters. The Organization maintains that the work records reveal that Signal Gang No. 6 did not perform any work on the snow melters during the regular workweek leading up to the weekend overtime service.

The Organization points to a document, which it contends was issued by the Labor Relations Department in April 2006, describing different overtime scenarios. Several of the scenarios in the document are similar in nature to the dispute here and allegedly support its contention that miscellaneous overtime should be assigned based on seniority on the district.

The Organization also cites Third Division Awards 30833 and 33909 in support of its contention that "standards of seniority" apply when assigning

overtime. Lastly, it argues that the unambiguous language in Rule 15 clearly entitles the Claimants to the overtime at issue.

The Carrier argues that the Organization failed to meet its burden to prove that the Claimants were entitled to the work because, given the facts of this dispute, they are not “part of a group of employees who customarily work together, . . .” as required by Rule 15. Further, it contends that the work is not “miscellaneous” because it is work that was part of the junior employees’ regular assignments and continued in the overtime assignments on the weekend.

The Carrier contends that it assigned the overtime to the junior employees in accordance with Rule 15, the May 16, 1999 Letter of Agreement (LOA) for Calling Gangs for Overtime Service, as well as its corresponding Side Letter dated May 16, 1999. The Side Letter specifically addresses situations in which Signal Maintainers are to be considered members of a gang on their assigned maintenance territory. The Carrier alleges that the junior employees - B17 Signal Maintainers - were assigned to work on Switch No. 49 and the snow melters during their regular assigned hours. The Carrier submits that the work records confirm that Signal Gang Nos. 6 and 9 were correctly assigned to the B17 territory on overtime to assist with the snow melters and that, therefore, the overtime assigned to the junior employees was allocated in accordance with the LOA and the Side Letter. Nothing in the record, asserts the Carrier, indicates that (1) the Claimants had any connection to the work in question and (3) as Signal Testmen, they are not in the same classification as a Signal Maintainer.

The Carrier also contends that the document issued by the Labor Relations Department upon which the Organization relies is not part of the parties’ Agreement and, therefore, has no application in this dispute; nor does it constitute evidence that seniority for assigning overtime is required. The Carrier asserts that an employee who regularly performs a certain type of work during the regular workweek has a “first right” to complete the task on overtime, regardless of seniority, if it is necessary for the work to be completed. The Carrier relies on Third Division Awards 5346, 28490 and 39491 to support its contention that the junior employees in the instant dispute had the “first right” to the disputed overtime.

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 Side Letter reads, in pertinent part, as follows:

“... it is hereby agreed that current Rule 15 shall be defined to include maintainers as being part of the ‘group of employees who customarily work together,’ as this phrase is used in the Rule, provided such maintainer(s) actively participate, to the extent possible, in the work being performed during assigned hours.”

The Board finds that the Organization failed to meet its burden to prove with substantial evidence that the Carrier violated Rule 15. The Claimants are not members of the “group of employees who customarily work together” who have a connection to the installation, maintenance, and adjustment of snow melters for switches at the B17 plant. Therefore, there was no violation of the Rule as claimed. The Board does not find any express language in the parties’ Agreement giving the

Claimants' seniority preference to the disputed overtime. In order for the "standards of seniority" to apply to the Claimants, the Agreement would have to be devoid of any other provision reserving the overtime for the junior employees. Here, the Board finds that the Agreement contains specific language supporting a conclusion that the overtime in question was appropriately assigned to the junior employees.

The work records sufficiently confirm that a Signal Maintainer assigned to the B17 plant began work on the snow melters during his normal working hours and continued into overtime on the weekend. The Side Letter provides express language that permits the Carrier to assign a gang to work with the Signal Maintainer because there is a connection between the two within the meaning of Rule 15 as "a part of a group of employees who customarily work together."

The Board reviewed the numerous Awards presented by the Organization and finds that while we agree with the principle that seniority plays a role in allocating overtime unless restricted by the Agreement, in the instant case, as cited above, there are several contract provisions that prevent the use of general Departmental seniority. The Board in Award 30833, while concluding that seniority should have been used to assign overtime outside of the Claimant's territory, also states that "... absent any other overriding reason for not considering seniority and absent any question of relative ability or other work demands, the senior employee was entitled to the overtime" In the instant case, we find that there were "overriding" provisions in the Agreement to not consider the seniority of the Claimants in allocating the overtime. They were not members of the gangs; nor is there any evidence that they "customarily work together" on the B17 maintenance territory. Therefore, they are not subject to the protection of Rule 15 in the matter before us here.

Based on the foregoing, the Board finds that the case record lacks the requisite substantial evidence that the Carrier violated Rule 15 of the Agreement. Accordingly, the claim must be denied.

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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.