

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 42131  
Docket No. SG-41391  
15-3-NRAB-00003-100328

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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 Rail Corp.:

Claim on behalf of T. D. McGhee and J. N. Totos, for 36 hours each at their overtime rates, account Carrier violated the current Signalmen’s Agreement, particularly Rule 15 and Side Letter 13 (dated May 16, 1999), when it used other employees instead of the Claimants for overtime service on April 17, 18, 19, and 20, 2009, and denied the Claimants the opportunity to perform this work. Carrier’s File No. 11-3-720. General Chairman’s File No. 10-RI-09. BRS File Case No. 14416-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.

The Claimants, who were the Signal Foreman and the Lead Signalman on System Gang No.2, protest the Carrier's assignment of pre-planned weekend overtime work of piloting a hi-rail vehicle performing a GPS survey for the ETMS data base and providing track protection for such vehicle, to two System Gang No. 11 employees senior to them, on the basis that they were connected to the work because they had been working on the ETMS project in the prior weeks. ETMS was a large multi-year project involving many crafts and signal gangs, and the record makes clear that the Claimants never performed the type of work here involved on that project. The claim is based on Rule 15 and Side Letter 13.

The pertinent part of Rule 15 states:

“When overtime service 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 desire.”

Side Letter 13 deals with the assignment of overtime to Signal Maintainers on their assigned territory or plant.

The Organization relies upon the Claimants' connection to the work, as shown by the ETMS billing code their work was charged to in the prior weeks, and the absence of such connection by System Gang No. 11, in arguing that the Claimants had a preference to this overtime assignment. The Carrier initially argues that the work at issue is (1) outside the scope of the Agreement, (2) has been performed by several different crafts, and (3) it is not restricted in assigning such work, noting that the Organization never disputed on the property that the work was not scope-covered, relying on Public Law Board No. 5564, Awards 39 & 43. The Carrier takes issue with the Claimants' "connection" to the work, noting that (1) they had never performed the type of work involved in this overtime assignment, (2) many crafts and gangs were similarly involved with the extensive ETMS project over a lengthy period, and (3) a billing code is insufficient to establish a connection giving them entitlement to the overtime assignment. The Carrier also points out that (1) it assigned the work to senior employees from the District, (2) such assignment to this craft did not bring the work within the scope of the Agreement, and (3) the Organization failed to prove that the Claimants were members of a group who customarily worked together in performing this type of work – a requirement of Rule 15 – citing Third Division Award 39491, or

that (4) Side Letter 13 even applied to the Claimants, who were not Signal Maintainers assigned to a territory.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving any Rule violation in this case. Neither piloting a hi-rail vehicle nor flagging are the type of work that is reserved to the Claimants pursuant to the Agreement, nor exclusively performed by this craft. See, e.g. Public Law Board No. 5564, Award 43. On the property, the Organization did not dispute the Carrier's contention that the work was not scope-covered, but argued that once the Carrier decided to assign the work to BRS-represented employees, it was bound to follow the Rules contained in the Parties' Agreement. Work does not become scope-covered solely by the Carrier's determination to assign it to one group of employees or another at any given time. In this case, the Carrier chose to utilize craft employees who were senior to the Claimants. Further, the Organization failed to show that the Claimants had preference to this overtime pursuant to either Rule 15 or Side Letter 13, neither of which applies to their situation in this case. 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 13th day of July 2015.