

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42443  
Docket No. SG-41843  
16-3-NRAB-00003-120118**

The Third Division consisted of the regular members and in addition Referee Roger K. MacDougall 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.:

Claim on behalf of M. S. Musgrave, for 12 hours pay at the overtime rate, account Carrier violated the Agreement, particularly Rules 15, 26, and the May 16, 1999, Letter of Agreement (regarding calling gangs for overtime service) when it used a junior employee instead of the Claimant for overtime service on August 29, 2010, thereby denying the Claimant the opportunity to perform this work. Carrier’s File No. 11-21-775. General Chairman’s File No. 212-MW-10. BRS File Case No. 14655-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 Organization says that the Carrier violated the Agreement, particularly Rules 15, 26, and the May 16, 1999 Letter of Agreement (which deals with calling gangs for overtime service), when it failed to use the Claimant for overtime service on August 29, 2010. They say that the Carrier improperly assigned the work to a junior employee who had no prior connection to the project.

The Organization says that the Claimant had performed preparation work numerous times at the location where the overtime service took place. The overtime service performed was part of a larger ongoing project at an interlocking that had been assigned to the Claimant's gang. They say that the Claimant had done the work in question numerous times at this location. They go on to say that the person assigned had no connection to the work performed and was junior to the Claimant.

The Carrier says that the work involved was the installation of highway grade crossing protection equipment (HPX's) on August 28 and 29, 2010 (a Saturday and Sunday). This was work for which overtime was paid. They say that they correctly assigned the work in question to the Signal Maintainer assigned to the signal maintenance territory in question, to another Signal Maintainer and to two Signal Testmen. They maintain that the Claimant had no right to this work, as he had no "connection" to the work in question. The gang, of which the Claimant was a part, did not work in this area during the prior week – in fact it worked in three separate locations. Similarly, when the gang had performed work in this vicinity, it was on the interlocking to protect rail traffic – not the HXP installation to protect highway traffic.

The Rules in question state:

**“RULE 15 SECTION 1 – OVERTIME AND CERTAIN PAYMENTS  
TO MAINTAINERS**

(a) Before and After Basic Day: The hourly rates named herein are for an assigned eight (8) hour day. All service performed outside of the regularly established working period shall be paid as follows:

Overtime hours, either prior to or following and continuous with regular working period, shall be computed on the actual minute basis and paid for at one and one-half times the basic straight time rate. Time worked in excess of sixteen (16) hours of work in any twenty-four (24) hour period, computed from the starting time of the employee's regular shift, shall be paid for at double their basic

straight time rate. 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 so desire.

See Side Letter No. 5

**EXAMPLE:** Gang 1 has fifteen men in it. Five are engaged, for instance, in tying line wire. If overtime on such work is necessary, say, of two employees, the senior of the five (group) if qualified and available, will be given preference. If the entire five men are needed, the five will work the overtime regardless of seniority in the gang of fifteen men as a whole. When there is planned overtime work or service to be performed on rest days, the senior man of the class involved will be given preference to perform such overtime service. This rule and example apply to gang and signal shop.

#### **LETTER OF AGREEMENT DATED MAY 16, 1999**

- (i) When overtime service is required, the gang which performed the work during normal working hours will be called first.
- (ii) If additional personnel is needed, other signal employees will be called in seniority order from the gang (gangs if more than one are headquartered at the same location) headquartered nearest to the gang outlined above, working on the same district.
- (iii) If signal forces are still insufficient, additional signal employees will be called, in seniority order from the next closest gang (gangs if more than one are headquartered at the same location) until all gang personnel from that district are called.

#### **RULE 26 – SENIORITY DEFINED**

- (a) Seniority shall consist of rights based on relative length of service as herein provided.
- (b) Prior rights, and the seniority that goes with it, shall be applied as being superior to an individual's relative position on the system

seniority roster when an employee is stationed on their prior rights district. Prior rights takes priority in the exercise of seniority, overtime allocation, and preference for receiving vacation or other paid for time not worked.

A full analysis of the materials supplied to this Board, along with the very able arguments made by both sides at the Hearing, reveal that the work the gang had been doing the previous week was not at the location at issue. Further, when the gang had previously worked at the locale, it was not doing the same type of work. For both reasons, the Organization has been unable to meet its burden of proof in this case.

**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 31st day of October 2016.