

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42444
Docket No. SG-41893
16-3-NRAB-00003-120193**

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 Corporation (METRA):

Claim on behalf of B. M. Coady, for 24 hours pay at the overtime rate, account Carrier violated the Agreement, particularly Rules 15 and 26 when it used a junior employee instead of the Claimant for overtime service on May 1 and 2, 2010, and denied the Claimant the opportunity to perform this work. Carrier’s File No. 11-21-780. General Chairman’s File No. 206-MW-10. BRS File Case No. 14687-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 Claimant in the instant case is B. M. Coady, who, at the time this dispute arose, was assigned to a Signal Maintainer position on the Roselle territory on the Carrier's Milwaukee Road District.

In a letter dated June 28, 2010, the Organization filed a claim on behalf of the Claimant, contending that the Carrier violated Rules 15 and 26 when it worked a junior signal employee, D. Devitt, for overtime service on May 1 and 2, 2010, and did not work the Claimant. Mr. Devitt was a member of Signal Gang 6, headquartered at Spaulding Interlocking, and was assigned to assist a "tie gang" for overtime service. The Organization noted that Mr. Devitt did not have a valid connection to the overtime service and, as such, this work should have been offered by seniority preference to the Claimant, who is senior to Mr. Devitt.

The Carrier says that they assigned a Maintenance of Way tie gang to perform tie renewal work on the A20 Signal Maintenance territory on the Carrier's Milwaukee District. The Carrier also required Signal employees to work alongside the Maintenance of Way Tie gang in case there was a need to repair or replace any components of the signal system. The Carrier assigned three employees to perform the signal work, an employee from Signal Gang 6 and also two Signal Maintainers assigned to maintain the A20 Signal Maintenance territory, as under the agreement the Signal Maintainer(s) assigned to the territory where work is performed is considered a member of the Signal Gang.

The Carrier argued the three employees who were assigned to perform the work were allocated the overtime in accordance with the agreement, as no rule restricts the Carrier from assigning a gang employee or gang employees from performing this work with the tie gang. The Carrier also noted Side Letter 13, to the CBA, supports the Carrier's position that the work was properly allocated to gang employees, as it states the Signal Maintainer(s) assigned to the territory where work is performed are to be considered members of the "group of employees who customarily work together" in this case a gang, performing work on a territory. The Carrier's assignment of the work was in accordance with the agreement, they say.

The Rules in question read, in pertinent part, as follows:

RULE 15

SECTION 1 - (a) OVERTIME--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.

Rule 26

SENIORITY DEFINED: Seniority shall consist of rights based on relative length of service of employees as herein provided.

Side Letter 13

In connection with adoption of Wage, Rule, and Benefit Agreement today, the issue of the access maintainers have to overtime when other Signal Department employees are performing work on a maintainer's assigned territory or plant was discussed. In these discussions, it was recognized that, inasmuch as signal maintainers have primary responsibility for the maintenance of their assigned territory or plant, they should be utilized to the extent possible, when work is to be performed on such assigned territory or plant.

In view of such recognition, 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.

Such use of the maintainer(s) shall not serve to affect the manpower that is required to perform the work.

There is no dispute that Mr. Devitt is junior to the Claimant. There is also no dispute that the Carrier worked Mr. Devitt, on the days in question, and not the Claimant.

The issue between the parties can be boiled down to whether Signal Gang 6 was actually assigned to the "tie gang" project or not. If they were, then the Carrier properly assigned Mr. Devitt to the work as he was subject to Side Letter 13. However, the Organization contends that this Signal Gang was never actually assigned to the tie gang project. They point to the fact that Mr. Devitt was the only member of Signal Gang 6 to be worked on the days in question. They point out that the foreman of that Gang actually worked at another location, on another project. They further attest that no other member of Signal Gang 6 worked on the days in question. This detailed evidence is uncontested before this Board.

As a result, this Board finds that Signal Gang 6 was not assigned to the tie gang project and, thus, that Side Letter 13 does not apply.

As a result, the Claimant should have been assigned the work in question.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of October 2016.