

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42454
Docket No. SG-42478
16-3-NRAB-00003-140089**

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. (METRA):

Claim on behalf of D.W. Moore, for 80 hours’ pay at the overtime rate, account Carrier violated the current Signalmen’s Agreement, particularly Rules 15, 26, and the Signal Department Seniority Roster when it used a junior employee who was not prior righted on the Rock Island District instead of the Claimant for overtime service on August 20–31, 2012, and thereby denied the Claimant the opportunity to perform this work. Carrier's File No. 11-21-838. General Chairman’s File No. 102-RI-12. BRS File Case No. 14987-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.

At the time the dispute arose, the Claimant was a Signal Testman, headquartered at Blue Island, IL. This dispute arose when, from August 20-31, 2012, the Carrier worked another Signalman, whom the Organization says is junior to the Claimant, instead of the Claimant, for overtime pay.

The Organization says that the Carrier violated Rule 15 and the Signal Department Seniority Roster when it worked a junior signal employee, A. Bakotic, at the 16th Street, Polk Street, Taylor Street, and Chicago Terminal Interlockings. They say that Mr. Bakotic's work consisted of performing Federal Railroad Administration (FRA) route locking tests, as well as instructing inexperienced Signal Testmen how to perform these tests and ensure that they were performed to FRA standards. The Organization explained that the Claimant was a Signal Testman, was the most qualified to perform the work, and was senior to the employee that Carrier worked. The Organization also explained that the Signal Testman classification has always performed this type of work and that the employee worked was not a Signal Testman at the time of the violation. The Organization argued that the Claimant was available, rested, and willing to perform overtime service on the claimed dates.

The instant claim requested that Carrier compensate the Claimant for 80 hours at his overtime rate of pay for the loss of work opportunity.

Rule 15 states (in part):

**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 of the class involved shall have preference to such overtime if they so desire.”

The Carrier denied the instant claim and asserted that the claimed work was performed by Mr. Bakotic who was assigned to a Signal Testman position that worked the 11:00 P.M. until 7:00 A.M. shift. The Carrier explained that Mr. Bakotic was a Signal Electronic Technician (SET) and argued that it was necessary to have a SET on duty during the claimed work.

Over the dates of August 20-31, 2012, the Carrier required the services of a Signal Electronic Technician (“SET”) during the 11:00 P.M. to 7:00 A.M. shift. As there are no SETs bulletined to work those specific hours, the Carrier elected to use Mr. Bakotic, who occupied a SET position, off his regularly assigned shift. Accordingly, the Carrier paid Mr. Bakotic to rest during his bulletined hours of 7:00 A.M. – 3:00 P.M. so that he would be rested to work at 11:00 P.M. as required. The Carrier then paid Mr. Bakotic at his applicable overtime rate of pay for the work he performed from 11:00 P.M. to 7:00 A.M.

Essentially, this case comes down to the question of the work performed by Mr. Bakotic. The Organization says it was the work of the Signal Testman. The Carrier says it was the work of the Signal Electronic Technician that was performed by Mr. Wiabel. The Carrier says that this is the reason he was called and that was the work that he performed. The Carrier also says they called Mr. Bakotic to perform the Signal Testman work in question. There was conflicting evidence presented at the hearing as to who did what.

In cases like this, the burden rests with the Organization to prove its claim. The Carrier has the right to assign employees as it will, subject to the CBA. With the conflicting evidence before this Board, and after a full review of the record and hearing the case ably presented by both parties, this Board finds, in this instance that the Organization has failed to meet its burden of proof.

AWARD

Claim denied.

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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.