

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42941  
Docket No. SG-43651  
18-3-NRAB-00003-160422**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(CSX Transportation, Inc.

**STATEMENT OF CLAIM:**

“Claim on behalf of the General Committee of the Brotherhood that:

Claim on behalf of T.J. Kuhn, for 10 hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 14, when, on February 2, 2015, it used a junior employee instead of the Claimant to perform overtime service and thereby denied the Claimant the work opportunity of said work. Carrier’s File No. 2015-184276. General Chairman’s File No. 15-02-14. BRS File Case No. 15440-B&O.”

**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 filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the current Signalmen’s Agreement when it failed to assign

an overtime work opportunity on February 2, 2015, to the Claimant, and instead assigned this work to a junior employee. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because Rule 14 provides that overtime service will be assigned to the senior employee, because the Claimant was assigned to the territory where the work was performed and was on the call list for overtime, because the Claimant was senior to the employee whom the Carrier improperly assigned to the work, because the work should have been assigned to the Claimant, and because the Carrier deprived the Claimant of this work opportunity. The Carrier contends that the instant claim should be denied in its entirety because no violation of Rule 14 occurred, and because an emergency existed, which allowed the Carrier substantial latitude in allocating the overtime.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has met its burden of proof that the Carrier violated the Agreement when it used a junior employee instead of the Claimant to perform overtime service. The record reveals that the Claimant was the senior available employee off the class involved and was on the call list and should have been called to perform the work at issue. Rule 14 provides that the Claimant shall have the preference to overtime work based on his seniority.

It is fundamental that when an Organization meets its burden of proof in cases of this kind, the claim must be sustained. In this case, the record is clear that the Organization has succeeded in meeting its burden of proof. Therefore, the claim must be sustained.

### **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 14th day of February 2018.**