

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43438  
Docket No. SG-44332  
19-3-NRAB-00003-170421**

**The Third Division consisted of the regular members and in addition Referee Paul Betts when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Railroad Signalmen**  
**(Union Pacific Railroad Company**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:**

**Claim on behalf of J.W. Launer, for 8 hours at his overtime rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Rules 10, 11, 12, and 65 when on March 14, 2016, it improperly permitted employees who were working on another assignment to perform overtime service while working in conjunction with a Surfacing Gang on the Claimant's assigned territory, thereby causing him a loss of work opportunity. Carrier's File No. 1655698. General Chairman's File No. N 10 0054. BRS File Case No. 15637-UP.”**

**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.**

In the instant claim, the Organization alleges the Carrier violated the Agreement when it improperly permitted employees who were working on another assignment to perform overtime service while working in conjunction with a Maintenance of Way (MoW) surfacing gang on the Claimant's assigned territory, causing the Claimant a loss of work opportunity.

During the time period in question, the Claimant was assigned as the Signal Maintainer responsible for the territory on which the disputed work took place. The Claimant's assigned work schedule was Tuesday through Saturday, with Sundays and Mondays as rest days. On Monday, March 14, 2016, a MoW gang was working within the Claimant's territory performing surfacing work. The Signal department had a two-man signal gang following behind the MoW gang in order to ensure proper signal system functions. The Carrier maintains the two-man signal gang, consisting of the regularly assigned employees, was to work with the MoW gang, not the Claimant.

The Organization argues a) the Claimant was the regularly assigned employee for the section of tracks and territory where the claimed work took place, b) the Claimant provided coverage for the MoW surfacing gang on his assigned territory the previous week on March 10, 11, and 12, 2016, c) the two-man headquarter gang was used to absorb overtime, and d) the Carrier's defense of the claim is unsubstantiated.

The Carrier argues a) the Claimant was not the regularly assigned employee for the claimed work, b) the two-man signal gang consisted of the regularly assigned employees for the claimed work, c) the Organization failed to demonstrate how the rules it was relying on supported its claim, and d) the Organization failed to satisfy its burden of proof obligation.

After a thorough review of the record, the Board finds the Organization failed to meet its burden. There is no dispute the Claimant was the assigned Signal Maintainer responsible for the section of track and territory on which the work took place. What is in dispute is whether the Claimant had the right to claim the work that is grieved. Central to this point is the statement provided by Signal Manager O'Brien. Manager O'Brien stated the following:

“The surfacing gang that was mentioned in this claim was a regional Cat gang.

Two man signal headquarter gangs were created to follow these regional Cat gangs and handle all signal work that they create. On March 10, 11 and 12th the Head quarter gang was unable to follow the Cat gang because they were working with another gang. When they became available I sent them to help with the work in question Just because it was the claimants assigned territory does not entitle him to all work on that territory”

It should be noted that Manager O’Brien’s statement was never refuted during the on-property handling of the claim. Based upon Manager O’Brien’s statement, the Carrier created the assignment of a two-man gang to follow behind and work with the MoW surfacing gang in order to ensure proper signal system operation. On the day in question, this two-man gang was available and performed its normal functions. On the days prior, the gang was not available, so the Claimant assisted. Just because the Claimant previously participated in the work does not mean that the claimed work was solely his to perform. The Board finds the two-man signal gang consisted of the regularly assigned employees for the claimed work, not the Claimant. Therefore, the claim must be denied.

Although the Board may not have repeated every item of documentary evidence, nor all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

**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 1st day of March 2019.