

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43788
Docket No. SG-44002
19-3-NRAB-00003-170057**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp 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 of Railroad Signalmen on the CSX Transportation (formerly Monon):

Claim on behalf of W.C. Munn, for 13 hours and 20 minutes at the overtime rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 8, when, on June 21, 22, 23, 24, and 27, 2015, when it worked an employee who was not assigned to the Monon property for overtime trouble calls, which caused the Claimant a loss of work opportunity. Carrier’s File No. 2015-192336. General Chairman’s File No. Munn. BRS File Case No. 15606-Monon.”

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 is a Signal Inspector assigned to the Carrier's MONON property and headquartered in Lafayette, Indiana. This claim arose in late June 2015 when the Carrier assigned employees from the Louisville & Nashville (L&N) property to overtime trouble calls on the Hoosier Subdivision, which is part of the MONON property. The Signalman ordinarily assigned to maintain the territory, Jeremy Blanton, was on vacation.

According to the Organization, the Claimant is on the seniority roster for the Monon property and was available for the claimed work. The Carrier violated the clear and unambiguous terms of Rule 8, Section 1, when it assigned L&N employees to the calls instead of calling the Claimant. Rule 8 does not differentiate between work performed on straight time or overtime. The Rule requires the Carrier to utilize Signal employees holding seniority on the Monon property to perform all signal work on that property. The employees assigned to the trouble calls were from another seniority district and hold no seniority on the district where the work took place. Arbitral precedent has consistently held that established seniority district lines cannot be crossed with impunity because doing so deprives employees of work opportunities within their district. The Carrier's position that the Claimant is not due any remedy because he was employed at the time has been rejected by numerous Board awards.

The Carrier contends that the Organization has failed to meet its burden of proof. The Organization has not shown that the Claimant was on any overtime list or calling arrangement. The Carrier asked the Claimant to be on the call list and he declined. Moreover, there are numerous Board awards holding that the Carrier is not required to use employees on an overtime or premium basis when the work involved can properly be performed on a straight time basis. Nor has the Organization offered any proof that the call outs required that a Signal Inspector respond to correct the problems. Finally, Rule 8, Section 1, does not mention either overtime assignments or the call out of employees, and there is no specific language in the Rule to support the position that the Claimant was entitled to the call outs.

The parties rely on two different articles in the BRS Monon Agreement. Rule 3, Hours of Service, Overtime and Calls, states in relevant part:

“Section 10. Employees who are subject to call because of the requirements of the service will notify the person designated by the Management of the Railway Company where they may be called and will respond promptly when called. When such employees desire to leave their home station or section during regular working hours they will endeavor

to procure authority from the Signal Supervisor who will grant permission if the requirements of the service permit.

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Section 26. When overtime service is required of part of a gang or group of employees, senior employees of the class involved shall have preference to such overtime when practicable.”

Rule 8, Miscellaneous, states, in relevant part:

“Section 1. No person or employees other than those coming under the classification rules and holding seniority in the Signal and Telegraph Department shall be required, or except in case of any emergency be permitted, to do any work specified or covered by this agreement. This does not prohibit supervisory officers from making any test or inspections for the purpose of determine employees coming within the scope of the agreement are properly maintaining, inspecting and inspecting apparatus assigned to their care. If any apparatus or instruments cannot be adjusted or repaired by the employees classified herein, such apparatus or instruments may be returned by the Railway Company to the manufacturer for repair.”

The record includes e-mails from two different managers who were involved in this case and responded to queries about what had happened. Shawn Leach, the Claimant's supervisor, wrote:

“The employee on vacation reports to Greg Gibbs on the Louisville Division. The Hoosier Sub is under the Monon agreement but is not my territory. Bill Munn reports to me as a signal inspector on the Monon contract and his job duties include signal inspection on the Monon and Hoosier Subs, however the Hoosier Sub is not under my supervision. Greg Gibbs has the Hoosier sub and its maintainer(s). *Mr. Munn has told me on several occasions that since he is a signal inspector that he doesn't feel that he should be responsible to take trouble calls on overtime and has asked to be removed from my call lists on the Monon territory. We have had conversations about this more than once and specifically talked about calls on the Hoosier which he agreed was not very efficient because of the 2+ hour drive time he would have to respond to any call. (Emphasis added.)*”

Greg Gibbs, Signal Manager on the Louisville sub, wrote:

“Marvin White and Nick Thornsberry [two of the employees assigned to the trouble calls] are L&N employees they work for me on the Main Line sub. Jeremy Blanton is the only maintainer on the Hoosier call list. We have taken most of that territory out of service. *I did ask Mr. Munn if he wanted to be on the call list and he declined....* (Emphasis added.)”

There is no evidence in the record to rebut the statements from Leach and Gibbs that the Claimant has been asked if he wanted to be on the call list for overtime on the Hoosier sub and that he had declined. The Carrier has no responsibility to call someone who is not on the call list and has made clear his desire *not* to be on the list or to be called out for overtime trouble calls. There is also no dispute that the Signal Maintainer who was on vacation was the only maintainer on the Hoosier Sub. Accordingly, the Carrier did not violate Rule 8 when it assigned employees from the L&N Sub to take the trouble calls at issue 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 16th day of July 2019.