

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43790
Docket No. SG-44239
19-3-NRAB-00003-170334**

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 Baltimore & Ohio):

Claim on behalf of G.L. Bishop II, for 32 hours at the ESS overtime rate, and for his seniority to be properly posted on applicable rosters and agreements, account Carrier violated the current Signalmen’s Agreement, particularly CSXT Labor Agreement No. 15-036-07, Appendix B, when, on November 2-3, and 9-10, 2015, it used a junior employee instead of the Claimant to perform overtime service and thereby denied the Claimant the work opportunity guaranteed by the Agreement. Carrier’s File No. 2016-199980. General Chairman’s File No. 15-25-07. BRS File Case No. 15549-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.

At the time this dispute arose, the Claimant, G.L. Bishop, II, was assigned to an Electronic Signal Specialist (ESS) position headquartered at the Halethorpe, Maryland, Dispatching Center. Claimant's scheduled work hours were 11:00 P.M. to 7:00 A.M. Wednesday through Sunday, with Monday and Tuesday rest days. On November 2, 3, 9, and 10, 2015, junior ESSs, K.A. Battle and H.V. Branch, performed overtime work on a temporary ESS shift vacancy¹ without the Claimant being offered the opportunity to work the overtime before it was offered to Battle. Branch worked shifts from 07:00 to 19:00 and Battle worked shifts from 19:00 to 07:00 on all four days, which were also Claimant's rest days. The Organization filed this claim by letter dated December 30, 2015. The parties having been unable to resolve the dispute through the regular claims process, the matter was appealed to the Board for final and binding adjudication.

According to the Organization, this is a straightforward case. The record includes an overtime schedule for the month of November 2015 that shows other employees assigned to work the schedules in question. The Claimant was senior to the employees who worked the overtime, and he was not offered the opportunity to work the overtime before it was assigned to them. He never saw the overtime schedule beforehand and only became aware of the shifts being covered after the fact. This is a clear violation of Appendix B of CSXT Labor Agreement No. 15-036-07. Even when employees are given latitude to work out their schedules, it must be done with consultation and the approval of management. Anyone who compiled the overtime schedule was acting as an agent of management.

The Carrier responds that matters are not as straightforward as the Organization asserts. The ESSs at the Halethorpe Dispatching Center have been given wide latitude to work out their own schedules among themselves, including overtime, but they do not have authority to change schedules without consulting management. There is no evidence that the Carrier prepared or was even aware of the overtime schedule, which was prepared by ESS Battle and distributed by e-mail to ESSs Branch and Earp on October 25, 2015. The Claimant was not copied on the e-mail, nor is there any evidence that the schedule was distributed to any management employee at CSX. Under the circumstances, it would be inappropriate to find the Carrier in violation of the Agreement for something it knew nothing about and did not have an opportunity to consult on. In addition, even if the Carrier should have known about the proposed

¹ One ESS was out of service and another had exercised his displacement rights and taken a job outside the ESS center.

schedule, it acted in compliance with Unnumbered Section of the 2001 MOU which gives the ESSs latitude to formulate their schedules, with the schedule voted upon by a majority implemented. Finally, the language of the Agreement provides that vacant shifts will be “filled by ESSs in seniority order, *if practicable*.” The last two words mean that temporary vacancies are not required to be filled in strict order of seniority.

Appendix B of CSXT Labor Agreement No. 15-036-07 states:

“Because the overtime rate indicated in CSXT Agreement 15-3-93, as adjusted for general wage increases (25.69 as of July 1, 2001), remains below the straight time rate of pay for ESSs, CSXT agrees to pay ESSs the straight-time rate for all hours worked outside regularly scheduled hours. Temporary shift vacancies will be made available based on service requirements; the vacant shift may be split and filled by ESSs in seniority order if practicable. If however, the filling of a vacancy by splitting the shift would prevent the ESSs from fulfilling the requirements of an assigned position, the senior employee who can work the entire shift will fill the vacancy.”

Also relevant is Unnumbered Section of the 2001 MOU, regarding schedule changes, which states:

“The practice with respect to scheduling changes will continue and is clarified in writing as follows:

The schedule of Electronic Signal Specialists may be changed based upon the requirements of service, after consultation with the General Chairman or his designee. CSXT will set the requirements of service and allow the (ESSs) to formulate their schedule, with consultation of the appropriate manager. . . . Each ESS will have the opportunity to submit a schedule for consideration. Each ESS will have one vote and the schedule with the majority of votes will be implemented.”

In addition, the record includes an e-mail statement dated February 22, 2016, from Network Operations Manager John Fristrom to Labor Relations, regarding this incident:

“Two things. First of all, the coverage was not scheduled or directed by C&S Management as far as I am aware. Secondly, I do not know what

discussions may or may not have taken place among the Baltimore ESS's. Historically, we have allowed the ESS's to coordinate their coverage schedules autonomously..."

The record is sufficient to establish that the Claimant was not offered overtime to which his seniority would have entitled him. However, the weight of the evidence is that the overtime schedule was developed and distributed by ESS Battle without authorization or consultation with management, in violation of the 2001 MOU. There was a violation of the Agreement, but not by management, and the Board agrees with the Carrier that it would be inappropriate to find the Carrier in violation of the Agreement under the circumstances. However, in future, local management should be careful to take more steps to be informed of the schedules developed by the ESSs for themselves.

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.