

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43801
Docket No. SG-44668
19-3-NRAB-00003-180062**

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 M.A. Sumpter, for 7.5 hours at his overtime rate and 8 hours at his straight-time rate, account Carrier violated the current Signalmen’s Agreement, particularly Rules 14 and 29, when, on June 13, 2016, it worked a junior employee instead of the Claimant during a derailment near the Howard Street Tunnel in Baltimore, Maryland, thereby denying him an overtime opportunity that accrued to him. Carrier’s File No. 2016-209861. General Chairman’s File No. 16-14-14. BRS File Case No. 15798-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.

On June 13, 2016, there was a derailment inside the Howard Street Tunnel in Baltimore, Maryland, that interrupted train service and required employees to work overtime to restore that service. At the time, the Claimant, M.A. Sumpter, was assigned as a Signal Maintainer on Territory 7D05, headquartered in Newark, Delaware. The Organization filed this claim by letter dated August 4, 2016, alleging that the Carrier had violated Rule 14 when it assigned a junior employee, N.D. Chryst, to work overtime after his bulletined hours on the Howard Street derailment cleanup rather than offering the overtime first to the Claimant, who was available and willing to work it. The parties having been unable to resolve the dispute during the normal claim procedure, the matter was appealed to the Board for a final and binding adjudication.

According to the Organization, the language of Rule 14(g) is clear and unambiguous: when overtime service is required of a group of employees, the senior employees “*shall* have preference of such overtime.” (Emphasis added.) The facts here are undisputed. Overtime service was required of the Claimant’s group of employees. Claimant was senior to Mr. Chryst. Under Rule 14(g), the Carrier was obligated to offer the overtime to the Claimant before offering it to Chryst. The Carrier’s effort to portray the situation as an emergency that warranted ignoring the clear terms of the Agreement is not persuasive. There is no proof that an emergency existed. In addition, the manager made it clear that he assigned the junior employee because he had “sufficient time to respond.” That is not a basis for assigning overtime. Nor is there evidence to support the Carrier’s defense that it did not want to leave the production team to which Claimant was assigned “in the hole” and that there were no signal employees available to fill that assignment. The Claimant is entitled to be paid his lost work opportunity.

The Carrier contends that the Organization has failed to show that the Carrier violated any rules or agreements. Rule 14(g) requires that employees be senior *and* be available. The Claimant was already assigned other duties following a production team and was not available; the Carrier was not obligated to pull him from his assignment or cut his time. The derailment constituted a real emergency. The Howard Street tunnel is a major CSX rail artery that carries significant rail traffic between the south and the northeast. Trains could not be run on schedule until the derailment was repaired and the tunnel was safe for service. The Board has historically held that in an emergency the Carrier has wide latitude in utilizing manpower. In Third Division Award 19236 (O’Brien, 1972), the Board stated: “... [I]n light of the fact that an emergency existed requiring immediate action to make necessary repairs, Carrier was allowed wider latitude in the use of its employees to restore normal service.” The Organization has failed to meet its burden of proof and the claim should be denied.

Rule 14, Overtime and Calls, states, in part:

“(g) When overtime service is required of a part of a gang or group of employees, the senior employees of the class involved, who are available, shall have preference of such overtime if they so desire.”

However, numerous awards from this Board have recognized the need for flexibility in assigning manpower during emergencies. The Organization contends that the Howard Street Tunnel derailment was not an emergency. The record includes a statement from the local manager, Shane Hodges, regarding the incident:

“It was a major derailment in which was considered a state emergency [sic]

Initially that first day of the derailment we used guys of the gang class (leaders, Foreman, Signalmen)

Once they went HSL we went to the Maintainers seniority list in which the only employee with sufficient time to respond was Nick Chryst. He was off that day due to HSL. He was able to report for duty with nearly a full 12 hours to work. He covered the work (supporting the FRA in making Signal tests) until the original Gang members came off HSL. He continued that schedule for the next couple of days because at that point his schedule had been swapped giving him time to work at night and HSL during the day”

The Organization argues that Hodges’ statement is “self-serving” and does not establish that the derailment was in fact an emergency. The Board does not agree. A statement that is self-serving does not include specific details of what happened or the response that was necessary to repair the derailment. While the statement came from a Carrier management employee, it was nonetheless credible and sufficient to establish to the Board’s satisfaction that the Howard Street Tunnel derailment did constitute an emergency.

The Board had held on numerous prior occasions that the Carrier has greater latitude in assigning employees in cases of emergency—in an emergency, there is a need to make repairs as quickly as possible in order to restore normal service. The Organization argues that the manager assigned the work to the junior employee because he had “sufficient time to come in,” which is not a recognized basis for assigning overtime under Rule 14(g). But how quickly an employee can report to work *is* an important consideration in an emergency. The Board finds that the Carrier’s calling

Mr. Chryst in lieu of offering the overtime to the Claimant was within the latitude the Carrier has during emergencies to assign manpower in order to restore service as quickly as possible.

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.