

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43804  
Docket No. SG-44842  
19-3-NRAB-00003-170701**

**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 J.M. Currance, for 16 hours at his respective overtime rate, account Carrier violated the current Signalmen’s Agreement, particularly Rule 14, when, on April 3 and 4, 2016, it worked a junior employee instead of the Claimant during a signal cut-in, thereby denying him an overtime opportunity. Carrier’s File No. 2016-206834. General Chairman’s File No. 16-11-14. BRS File Case No. 15711-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, J.M. Currence, was assigned as an Independent Foreman on Signal Construction Gang 7X13. According to the Organization, the Carrier violated the clear and unambiguous language of Rule 14, Overtime and Calls, Section (g), when it assigned a junior Acting Independent Foreman, K.A. Lowery, to overtime service that should have been assigned to the Claimant, specifically, pre-cutover and cut-in work that was part of the Mountain Subdivision Pole Line Elimination Phase 3 project. Lowery worked 13 hours of overtime on April 3, 2016, and on April 4, 2016, 3 hours of overtime in addition to 10 hours at straight time. The Claimant was part of the group of employees assigned to work the Independent Foreman position on Carrier's construction system on the seniority district of the disputed work. There is no dispute that the Claimant was senior to employee Lowery. Thus, as one of the "group of employees" eligible for overtime service, the Claimant was entitled under Rule 14(g) to be assigned the overtime in preference to Acting Foreman Lowery. The Carrier's position that the Claimant was not eligible for the overtime because it would have required splitting up gangs lacks support. The overtime service was pre-arranged and scheduled with knowledge that a Foreman would be needed. Moreover, as an Acting Foreman, Lowery was not actually in the class of employees entitled to the overtime. The Claimant was the senior, available Signal Foreman and should have provided the preference to perform the claimed work.

The Carrier denies that it violated the Agreement. There is a well-established practice by which the Carrier assigns overtime to the employee already occupying the position from which the overtime arises, which the Board has affirmed. That is the case here. The Claimant was not part of the team that was assigned to do the cut-in work, while the junior employee was. The Claimant was working position 7X13, which is an Independent Foreman's position, while employee Lowery was working position 7KG7 as part of the Test Team. There is a past practice where a senior foreman from a different team has not customarily or historically been called for overtime in the place of a foreman who is already assigned to the team performing the work. Teams are not split up in order to assign a more senior foreman to work with a team he has not been assigned to for a project. The Foreman's position on 7KG7 was vacant, and Mr. Lowery assumed the position of Foreman. Team 7KG7 is customarily assigned to handle RTV upgrades at a control point, which is the work at issue here. Team 7KG7 also handle the pre-testing for the cutover. Because his team was working the project, the junior employee was entitled to the overtime. At a minimum, this is a case involving a dispute in material facts. The Carrier asserts a past practice regarding overtime calling for foremen, which the Organization must rebut. It has not done so.

This case involves who has the right to overtime. Rule 14, Overtime and Calls, states, in relevant 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.”**

The Board has long recognized the importance of the principle of seniority and the importance of adhering to contractually agreed seniority rights. While the language of Rule 14(g) appears straightforward, a closer reading reveals ambiguities, in particular regarding the language “gang or group of employees.” The Organization contends that the Claimant was part of the “group of employees” who were assigned to work on the cutover project at issue here. But the Carrier distinguishes the work by “gang”: specifically, Test Team 7KG7 was assigned to do the work in dispute, and Acting Independent Foreman Lowery, who performed the work in dispute, was assigned as Foreman for the Test Team. Moreover, the Carrier’s initial response asserted the existence of a past practice by which overtime is assigned to the foreman already working with a gang or team, instead of bringing in a foreman who is not assigned to that gang. Carl Walker, Assistant Chief Engineer, wrote the Carrier’s first level response, dated July 27, 2016:

**“A review of the facts surrounding this claim reveals that Claimant was on a scheduled rest day on April 3, 2016 and was assigned his normal duties on position 7X13 as a Foreman on April 4, 2016. There has been no evidence presented that the Claimant was assigned by CSXT at any time to work with any team as part of the cut in.**

***The Carrier has not customarily or historically called a senior foreman from a different team in the place of a foreman who is already assigned to the team that is performing cut in work. Furthermore, the Carrier does not split up teams in order to assign a more senior foreman to work with a team he has not been assigned to for a project. There has been no violation of B&O agreement Rule 14, as there is no proof presented that Claimant was a participant in the work of any team assigned as part of the cut over on April 3<sup>rd</sup> or 4<sup>th</sup>, 2016 or that he was needed to support the cutover in addition to the employees involved. (Emphasis added.)”***

At no point in the on-property handling did the Organization dispute the Carrier’s claim of a past practice that assigns overtime to the individual already

assigned to perform the work on straight time or present evidence to the contrary. Nor is the past practice inconsistent with Rule 14(g). Accordingly, the Board finds that there is a past practice as articulated by the Carrier. The junior Acting Independent Foreman's assignment to the work in dispute was consistent with that past practice, and the Carrier did not violate the Agreement by the assignment.

**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.**