

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43915  
Docket No. SG-45226  
20-3-NRAB-00003-180684**

**The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Railroad Signalmen**  
**(Northeast Illinois Regional Commuter Railroad**  
**(Corporation (METRA)**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Railroad Corp:**

**Claim on behalf of T.J. Kremer, for 50 hours at his overtime rate of pay, and M. Newman, for 54 hours at his overtime rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 1, 15, 26, and the Seniority Roster dated January 2017, when on March 11–12, and 19, 2017, and April 1–2, 2017, Carrier assigned junior employees, K. Ferry, T. Tall, and B. Boatright, to perform overtime work resulting in lost work opportunities for the Claimants. Carrier’s File No. 11-2017-2. General Chairman’s File No. 109-ME-17. BRS File Case No. 15982-NIRC. NMB Code No. 172.”**

**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 of the facts giving rise to this dispute, the Claimants Kremer and Newman were each assigned to the position of Signal Testman in the Carrier's Signal Department. On March 11, 12, and 19, and April 1 and 2, 2017, the Carrier worked signal employees for overtime service. There is no dispute that Kerry, Tall and Boatright, the employees who worked the overtime, were junior to the Claimants. The junior employees performed Federal Railroad Administration (FRA) tests at the Carrier's Kensington location at Milepost 15.22, which included insulation resistance testing on newly installed cable, setting up and calibrating track circuits, as well as shunt testing.

On May 10, 2017, the Organization filed a claim on behalf of the Claimants contending that the Carrier violated Rules 1, 15, 26, and the Signal Department Seniority Roster and seeking that the Carrier compensate the Claimants for 104 hours of overtime worked by the junior employees for the lost work opportunity. The Carrier denied the claim on July 6, 2017, stating that the work performed was tied to the work that the junior employees performed during the week.

The Organization contends that the Claimants are the senior qualified employees and were entitled to the disputed work. It cites Rule 15, which states, in part,

**"When overtime service is required of a part of a group of employees who customarily work together, the senior qualified available employees of the class involved shall have preference to such overtime if they so desire."**

In addition, the Organization claims, the Claimant Newman is prior-righted on the NIRC's Electric District and as mandated in Rule 26, which acts as a seniority modifier when it comes to the allocation of overtime.

The Carrier contends that this issue has been decided by numerous prior boards, which held that Rule 15 does not require the Carrier to supplant junior employees performing overtime in connection with their assignment when the senior employees have no connection to the work.

The Carrier contends that the Organization has failed to show that the Claimants and the junior employees (Ferry, Tall, and Boatright) were properly considered "part of a group of employees who customarily work together." On property, the Carrier

asserted that the Claimants were not a member of this group of employees who customarily work together.

The Organization responded that the Claimants had worked at the Kensington Interlocking the week prior to the overtime, just as the junior employees had. Therefore, it argues that they are part of the group of employees who customarily work together. Further, the Organization points out that Newman was performing wiring and testing during the week, which was performed during the overtime work.

The Organization bears the burden of proving a rules violation. The junior employees were performing a continuation of the work they had performed during the week. Here, although the Claimants worked in the same area, there is no evidence that they were part of a group of employees who customarily work together. The work performed by the Claimants was not connected to the work performed by Kerry, Tall, and Boatright. Rule 15 does not give the Claimants the assignments rights for the disputed overtime work.

Additionally, there is no rule that requires the Carrier to replace junior employees with senior employees for overtime work that is essentially a continuation of the junior employees' regularly scheduled assignment. *See*, Third Division Award 41204.

### **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 28th day of January 2020.