

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44464
Docket No. SG-45241
21-3-NRAB-00003-190011**

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

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

Claim on behalf of W. Dunsworth, for one hundred and thirty-seven (137) hours at his overtime rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 1, 15, 26, and Carrier’s Signal Department Seniority Roster dated April 2017, when on May 11–19, 21–23, 25–26, 2017, Carrier assigned a junior employee, C. Eubanks, to overtime assignments to which the Claimant was entitled, thereby causing the Claimant lost work opportunities. Carrier’s File No. 11-2017-7. General Chairman’s File No. 113-RI-17. BRS File Case No. 15998-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.

The Organization claims that the Claimant is a prior rights employee and should therefore he should be given first preference to the overtime service pursuant to Rule 26. Carrier violated the Agreement when it ignored the Agreement by failing to follow prior rights seniority order, and provided a junior non-prior-righted employee with an overtime opportunity without first offering the opportunity to the Claimant.

The Organization rejects the Carrier's attempt to "muddy the waters" by initially asserting that the Claimant was not part of the work group and later, during the appeals process, asserting that it merely changed junior employee Eubanks' shift and schedule. The Organization continues that the Claimant's prior rights seniority takes priority for pre-arranged overtime as was present in the instant claim.

The Organization continues that there is an obvious violation and the Carrier's excuses do not constitute a proper defense and should fail. It is well-established that in order to deviate from seniority provisions, the Carrier must establish the affirmative defense of an emergency. The Carrier "then paid [the Signal Tester] at his applicable overtime rate of pay for the work in connection with his regular assignment he performed at night."

The Carrier does not dispute that the Claimant is a prior rights employee or that he is a Signal Testman. The Carrier also does not dispute that the Claimant has superior seniority to the employee who completed the work. The Carrier asserts that there was no contract violation because the work at issue needed to be done from 1900 to 0700. There are no Signals Department employees bulletined for the period. The Carrier asserts that it used a Signal Testman to perform the work. The Signal Testman was paid to rest during his bulletined hours of 1700 to 1500. Any attendant overtime was therefore part of the Signal Testman's regular assignment. The Carrier also asserts that the Claimant was not part of the group that customarily worked together and was not entitled to the work.

A review of the record indicates that the Claimant was the senior Signal Testman in the Rock Island District and enjoys prior rights protections of Rule 26(b) of the Agreement. Rule 26(b) provides:

Prior rights, and the seniority that goes with it, shall be applied as being superior to an individual's relative position on the system seniority roster when an employee is stationed on their prior rights district. Prior rights take priority in the exercise of seniority, overtime allocation, and preference for receiving vacation or other paid for time not worked.

The instant issue involving prior rights has been addressed by other referees. Referee Benn's decision in Third Division Award No. 41188 is instructive on the instant issue and states, in relevant part:

The bottom line here is that the language of Side Letter No. 10 is clear and unambiguous – Prior rights, and the seniority that goes with it, shall be applied as being superior to an individual's relative position on the system seniority roster when an employee is stationed on their prior rights district. Prior rights takes priority in the exercise of seniority, overtime allocation.... Public Law Board No. 5565, Award 34 recognized the clarity of that language and governs this dispute. The claim must therefore be sustained.

Here, the evidence establishes that the Carrier sought to avoid the protections of prior rights under Rule 26(b) by adjusting a junior employee's start time in order to assign the work, and the attendant overtime, to the junior employee and then assert the overtime was a continuation of the junior employee's regular work. The logic of Referee Benn is clear. As prior rights-protected employee, the Claimant should have been offered the work.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 10th day of June 2021.