

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44469
Docket No. SG-45568
21-3-NRAB-00003-190445**

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

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(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 J.K. Bird, for 12 hours at his overtime rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 15, Appendix U, the Signal Department Seniority Roster and past practice, when on January 21, 2018, Carrier assigned a junior employee, T.J. Tall, to an overtime assignment to which the Claimant was entitled; thereby causing the Claimant a loss of work opportunity. Carrier’s File No. 11-2018-7. General Chairman’s File No. 200-ME-18. BRS File Case No. 16102-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 filed a claim for overtime work that the Claimant should have been assigned on January 21, 2018, because he was the senior qualified employee. The Claimant was signal maintainer headquartered at Kensington Tower. The Organization alleged a violation of Rule 15 and Appendix U when it assigned a junior employee to perform the work.

The Organization claims that the junior employee worked with four other employees to replace a switch at Randolph Street Interlocking on the Carrier's Electric District. The Organization claims a past practice for switch replacement. According to the Organization, when extra signal employees are needed for overtime, the overtime work is offered in seniority order. The Organization contended that the Claimant should have been afforded the overtime opportunity, and was more than capable of performing the necessary test as outlined in NIRCRC's inspection and test instructions. There was no emergency and the Carrier should have followed the Agreement.

In denying the Claim, the Carrier responded that the overtime work was tied to a limited work group that had been working across the Metra Electric District. A Testman and Technician were required to do the work in order to test the Central Control Facility. Carrier stated that the Claimant was not the most senior employee to be called on the district nor part of the work group. According to the Carrier, a Signal Technician was required and the Claimant was not a Signal Technician. In correspondence, the Carrier stated: "The Carrier records reveal that past practices on the Metra Electric District for replacing and rewiring a switch machine was slated for the Testmen group and headquartered maintainer."

Rule 15 states in relevant part:

If additional personnel is needed, other signal employees will be called in seniority order from the gang (gangs if more than one are headquartered at the same location) headquartered nearest to the gang outlined above, working on the same district.

The Carrier frames the issue as whether the Carrier is required to utilize a senior employee over a junior employee when overtime work is performed in connection with the junior employee's job assignment. According to the Carrier, the issue has been decided in the Carrier's favor in numerous awards wherein the Claims were denied

because the junior employee was a “part of a group of employees who customarily work together.” Requiring the Carrier to assign overtime based solely on seniority without regard to gang assignment or the employee’s connection to the work is not required by the Agreement.

The Organization asserts a past practice of offering overtime to employees in seniority order when replacing a switch machine and additional employees are needed. One statement is offered in support. The Carrier contends the work performed by employee Tall was overtime in connection with his work assignment. The Carrier continues that the assignment conformed to the past practice and the Agreement.

The burden is on the Organization to establish the violation. Here, the Organization’s assertion is at odds with the Carrier’s position. The Organization’s assertions are unsupported by the record in this matter. When two positions are at direct odds, and there is insufficient evidence to resolve that conflict of positions, the must Board find that the Organization failed to satisfy its burden of persuasion in this matter. See e.g., Third Division Award 38356.

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 10th day of June 2021.