

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44797
Docket No. SG-46415
22-3-NRAB-00003-210201**

The Third Division consisted of the regular members and in addition Referee I. B. Helburn when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp. (Amtrak):

Claim on behalf of S.W. Jennings, for 60 hours at his overtime rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Appendices B-4 and B-17 VIII-E2, when on May 18, 2019 through June 22, 2019, Carrier used a junior employee to perform scheduled overtime service without affording the opportunity to the Claimant, thereby causing him a lost work opportunity. Carrier’s File No. 6137. General Chairman’s File No. AEGC-201920. BRS File Case No. 16296-NRPC(S). 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.

On five days between May 18, 2019 and June 22, 2019 Maintainer William Riggan, a Night Test Foreman and Safety Liaison with a June 1, 1977 hire date worked overtime while Claimant S.W. Jennings, an Assistant Foreman (Relief) at the C&S Trouble Desk within the Consolidated National Operations Center (CNOC), hire date April 16, 2012 was not offered the opportunity. On June 29, 2019 the Organization filed a timely claim on Mr. Jennings' behalf. The claim, which mentioned only a violation of Appendix B-4, line 8, was progressed on the property without resolution and, therefore, progressed to the National Railroad Adjustment Board for final and binding adjudication.

The Organization asserts that Appendix B-4, line 8, which governs, was violated because the Claimant, the senior qualified employee for the work in question, was available and willing to perform the work. The Carrier was not entitled to use an employee of its choosing when the call-out sheet had Riggan at the bottom and no emergency was shown. Six prior Awards support the Organization's position. Thus, the claim, which maintained a constant demand, should be sustained with the clear language of the Agreement applied.

The Carrier asserts that the Organization has not met its burden of proof and there was no violation of Appendix B-4 that required a call-out list for overtime involving trouble, not for pre-arranged overtime. The overtime in question was basically for construction; supervisors did not report to the Claimants Assistant Division Engineer (ADE). Moreover, the Organization's belated argument concerning Appendix B-17, not raised until the second-level appeal, should lead to dismissal of the claim because the claim has been altered, but even if B-17 is considered, there is no evidence of a violation. Finally, the requested remedy is not appropriate because prior on-property Awards call for payment at the straight-time rate for work not performed.

The Carrier's procedural contention based on the contention related to Appendix B-17, missing from the original claim but introduced at the second-level appeal, is denied. The original claim and the claim now before the Board identify the same Claimant, S.W. Jennings, and ask for the same amount of damages, sixty (60) hours at the overtime rate of pay. The contention that Appendix B-17 was violated, in addition to Appendix B-4, came in time for discussion on the property. The Carrier's reliance on Third Division Awards 20456 and 39035 to support the assertion that the claim should be dismissed was premised on the findings in those two Awards of "substantial variance" between the claims initially filed and the claims ultimately

placed before those Boards. Having carefully read the prior Awards, we do not find a “substantial variance” in the case now under consideration.

Appendix B-4, line 8 requires that “Employees will be called from the appropriate list for work in the order in which their names appear on the list.” Appendix B-17, Section VIII-Safety Liaisons states in relevant part at E-2 that “Safety Liaisons are not eligible for overtime unless such overtime will not interfere with Safety Liaison duties. Safety Liaisons will stand last on all overtime and callout lists except for overtime related to safety liaison duties.”

Appendix B-4 is headed as follows: “Procedure for calling C&S Department Employees for Trouble involving Maintainer’s work outside their regular working hours.” This unambiguous language excludes pre-arranged overtime from coverage under B-4 and nothing in the record contradicts the Employer’s explanation that the overtime in question was pre-arranged. The Organization has provided two different Mid-Atlantic Division C&S South Call Lists, both stating that “This List is NOT to be used for Pre-Arranged Overtime.” While the Board acknowledges the Organization’s contention that these call lists, in fact, do apply, that assertion does not override the written record. Finally, with respect to B-17, there is nothing in the record to establish that Riggin’s performance of overtime would have interfered with his Safety Liaison responsibilities.

Three potentially relevant principles exist in this case. The Carrier notes that the Organization has not met its burden of proof. The Board observes that it is so well settled that the Organization bears the burden of proof in contract cases, sometimes referred to as Rules cases, that no supporting awards are needed. A second basic principle is that “Seniority is one of the basic cornerstones of collective bargaining,” to be applied even in the absence of specific relevant contract language. Third Division Award No. 30833. A third principle is that Boards must honor and apply as written unambiguous contract provisions. Third Division Award No. 10888 and Second Division Award No. 6581.

This Board subscribes to all three of the principles and agrees with the Organization’s contention that Appendix B, E2 in particular is clear and unambiguous. In sorting out the application of these principles to the case under consideration, the Board views establishment of a *prima facie* case by substantial proof as akin to having the proper key to gain entrance to a residence, thus allowing access to sleeping and living quarters, kitchen and bathroom facilities. Continuing the analogy, successfully bearing the burden of proof opens the door to consideration of

seniority and relevant clear and unambiguous language. This Board must consider a record that does not have a relevant call-out list that includes the Claimant or evidence that Mr. Riggin's performance of overtime would have interfered with, and thus eliminated him, from consideration. The established industry practice estops the Board from making assumptions to fill in the blanks created by the missing evidence. The Organization has not provided the evidence to make at least a prima facie case. The failure to meet the burden of proof bars consideration of the above-noted second and third principles. The Claimant's right to exercise his seniority has not been established.

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 19th day of September 2022