

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44818  
Docket No. SG-46443  
23-3-NRAB-00003-200638**

**The Third Division consisted of the regular members and in addition Referee Michael D. Phillips when award was rendered.**

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(CSX TRANSPORTATION, INC.**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation:**

**Claim on behalf of J.L. Castro, G.J. Wall and R.D. Williams, for 10 hours at their respective overtime rate of pay, account Carrier violated CSXT Labor Agreement No. 15-018-16, Consolidation of Agreements and Uniform Rule 18(a) and (b) when the Claimants were denied the opportunity to work overtime during a cut in Chicago, Illinois, on November 1-13, 2018, it used junior employees to perform overtime work, thereby denying the Claimants an overtime opportunity that accrued to them. Carrier’s File No. 19-55386. General Chairman’s File No. C-18-CSX-052-3. BRS File Case No. 16248-CSX(N). 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 November 12 and 13, 2018, a signal cutover took place in Chicago, Illinois, during which Teams 7Z20, 7Z21 and other teams not pertinent to this case were scheduled to work. Team 7Z20 was scheduled to work from 0700 to 1900 hours on November 12, equating to 10 hours straight time and 2 hours overtime. Team 7Z21 was scheduled to work from 1830 hours on November 12 to 0630 hours on November 13, equating to 12 hours overtime.

The Organization submitted the instant claim on December 27, 2018, contending that the Carrier violated Uniform Rule 18 when the members of Team 7Z20 were not afforded the opportunity to work the overtime hours worked by Team 7Z21. The claim stated that the members of Team 7Z20 were senior to the members of the other team, and that they were available to work the overtime if it had been offered. It stated the neither team had been involved in the installation of the project, but that the work of cutting in the newly installed signal system was the same on both shifts. The claim requested that the members of Team 7Z20 be paid ten hours at the overtime rate.

The Carrier denied the claim, stating that no violation of Uniform Rule 18 had been established. It stated that the senior foreman on the participating teams, who supervised Team 7Z21, was given the overtime assignment. The Carrier stated that it did not split bulletined construction teams for the purpose of assigning overtime, and that the entire team works the assignment of the foreman. It stated that the foreman on Team 7Z20 was not a claimant, indicating his awareness of how such assignments are made.

The Organization submitted an appeal, again stating that the Claimants were entitled to preference to the overtime pursuant to Uniform Rule 18. The Organization asserted that the Carrier had offered no proof to support the assertion that bulletined signal teams are not split up for purposes of overtime. It stated that the gangs in this instance worked as one workgroup, receiving one job briefing prior to the start of the project, at the same location, reporting to the same manager in charge. The Organization argued that Uniform Rule 18 covers the preference of overtime in such circumstances, citing NRAB Third Division Award No. 27132 as holding that multiple groups of signal employees working on the same task constitute a gang within the meaning of a former rule which contained the same language, regardless of whether they are supervised by the same foreman. It also disputed the Carrier's reference to the junior foreman, citing another award which relied on Award No. 27132.

The Carrier denied the appeal, again maintaining that no violation of the cited agreement had been established. It stated that the Organization had failed to disprove the assertion that bulletined signal teams are not split up for purposes of overtime, arguing that teams are bulletined and work as a team. It noted that members of various teams have varying seniority dates, and it contended that it would be chaotic if teams would have to be dismantled or rearranged on daily, weekly or monthly basis so that certain members of one team are assigned overtime on a position awarded by bulletin to another employee. The Carrier asserted that it would be pointless to bulletin signal teams, as it would be required to rearrange them continuously based on the possibility of overtime. It denied that the teams were combined or that they constituted a merged gang, stating that multiple teams may be assigned different duties during a cutover, including tasks specific to each team and foreman. The Carrier also denied that the award cited by the Organization applied to Uniform Rule 18, or that the facts and circumstances involved in that case were similar to the instant case.

The parties discussed the matter in conference, maintaining their respective positions. The matter now comes to us for resolution.

The parties' positions before us are essentially the same as those set forth in the on-property handling described above. The Organization maintains its stance that the Carrier improperly assigned the overtime work to the senior foreman, rather than the senior employees, thereby depriving the Claimants of an overtime opportunity. It states that the language of Uniform Rule 18 is clear and unambiguous, and that the rule requires the Carrier to give preference to the senior available employees when an overtime opportunity exists, such as occurred here.

The Organization asserts that the Carrier has failed to properly rebut or overcome the substantial evidence provided in support of the claim, nor has the Carrier provided evidence to support its position. The Organization states that the Carrier did not dispute that the Claimants are senior to the employees who worked the overtime. The Organization cites prior awards which have addressed seniority principles, and which have held that, absent overriding reasons for not doing so, more senior employees should be given preference to overtime work opportunities. It also cites prior awards for the principle that clear and unambiguous agreement language must be applied as written, and it asserts that there is no need to look beyond the language of Uniform Rule 18 to determine that the Claimants are entitled to the overtime pay requested. It adds that the principle of making aggrieved employees whole for such losses is applicable here. The Organization contends that the Carrier failed to produce evidence or

documentation to support the denial of the requested payment, and it urges that the claim be sustained.

The Carrier first raises a procedural challenge, alleging that the Organization improperly altered the claim on appeal. We find nothing in the record to support that allegation, however, nor was such a challenge even raised on the property. We therefore reject the procedural challenge out of hand.

With respect to the merits, the Carrier reiterates its contention that no violation of the cited agreement has been established. It states that the agreement in question is only triggered when a team receives additional overtime work outside of their normal assignment, but that here each team worked the entire shift originally assigned to them and did work additional overtime. It cites the language of Uniform Rule 18 which refers to portions of a gang being required to work outside of their regular assignment, and it asserts that the word “team” is synonymous with the work “gang” for purposes of the rule.

The Carrier states that the plain language of the rule gives it authority to assign work to a gang, and then to offer overtime within the gang based on seniority. It also contends that in this case, the teams did not work outside of their original assignments, such that Uniform Rule 18 was not triggered. The Carrier states that there is no evidence the teams were merged, and it cites NRAB Third Division Award No. 39609 as denying a claim brought in similar circumstances. It argues that acceptance of the Organization’s position would lead to absurd results, including constant rearrangement of teams, raising safety and efficiency implications. It also denies that the Claimants are entitled to a remedy, as they were fully employed and suffered no loss. The Carrier posits that the Organization has not met its burden of proving an agreement violation, and it concludes that the claim therefore must be denied.

We have carefully reviewed the record, including the correspondence, attachments, and citations of authority, and we are unable to find that the Organization has established a violation of the cited agreement. Uniform Rule 18 provides as follows:

**Overtime Preference**

- a) When it is known in advance of the end of a tour of duty that a portion of a gang(s) is to be worked on a subsequent tour of duty (not a part of their regular assignment) or continuous with the current tour of duty, those with the greatest seniority in the class who were actually

performing the work prior to the overtime will be given the first opportunity for the overtime.

- b) If additional employees are required for such overtime, other qualified employees in the gang(s) will be offered the overtime in seniority order.

First, we note that a “gang” as used in the cited rule is the same thing as a “team,” as the parties use that term in the instant case. Other portions of the agreement include specific language to that effect with respect to both construction and special maintenance “gangs/teams.”

Although the Organization emphasizes the verbiage in the rule which addresses “those with the greatest seniority in the class being given first opportunity for the overtime” and additional employees being “offered the overtime in seniority order,” we cannot ignore the initial qualifying language which refers to a “portion of a gang” working outside their regular assignment. When read together, we do not believe the agreement language requires the Carrier to go outside a gang to offer overtime to others who are not a member of the gang, regardless of their seniority, at least in these circumstances. We read that language as requiring, when a portion of a specific gang is required to work outside their regular assignment, that the senior members of that particular gang have preference. As noted in NRAB Third Division Award No. 39609, in addressing similar agreement provisions:

“The plain language inescapably leads to the conclusion that gangs are assigned overtime and that within each individual gang, employees are offered overtime based on seniority. Stated simply, the language does not call for merging seniority lists across gangs when overtime is assigned (i.e., assigning overtime work to two different gangs when there is insufficient work for more than one gang).” (emphasis original)

Moreover, we also note that the work here does not appear to be outside of either gang’s assignment. In that circumstance, we do not believe the Carrier is obligated to analyze the seniority of all members of multiple gangs, who were assigned by bulletin, and choose employees from some or all of the gangs to work a particular shift. We do not believe that the award cited by the Organization, which addressed a predecessor agreement to Uniform Rule 18, requires a different conclusion. In that case, it appears that, after two gangs worked together, only a portion of the group was needed for additional work on a rest day. Moreover, the carrier in that case apparently did not refute or even address the contention that the gangs there were merged. That is not the

circumstance here. There is no indication that the two gangs actually worked together, nor is there any indication that work outside of the regular assignments was required. Whether or not the fact that the two gangs here had different foremen would be sufficient to separate them for purposes of overtime assignments, as the Carrier contends, we do not find that the Carrier was required to consider the two teams to have been merged in the circumstances presented such that it was required to make work assignments based on a combined seniority list.

It is fundamental that the Organization bears the burden of proving that a challenged action is contrary to the applicable agreement provisions, and we find that the evidence presented here is insufficient to meet that burden. Therefore, we must deny the claim.

**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 21<sup>st</sup> day of December 2022.