

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45342
Docket No. SG-48086
25-3-NRAB-00003-230611

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: (
(Canadian Pacific Railway

STATEMENT OF CLAIM:

“Claim on behalf of J.P. Donohue to be compensated 4 hours at his overtime rate of pay, including skill rate; account Carrier violated the current Signalmen’s Agreement, particularly Rules 3 and 4, when on April 12, 2022, Carrier failed to first offer overtime work to the Claimant before preferring it to a junior employee, thereby causing the Claimant a loss of work opportunity. Carrier’s File No. 2022- 00028253, General Chairman’s File No. 2022-00028253, BRS File Case No. 6248, NMB Code No. 308 - Contract Rules: Pay/Allowances/Penalty.”

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.

Claimant in this case is J. P. Donohue, who during the time relevant to this case, was a Signal Maintainer with assigned territory between MP 7.18 and MP 36.84 on the Paynesville Subdivision. On April 12, 2022, the Carrier assigned another employee to follow track forces who were replacing defective bridge ties at MP 41.9 on the

Paynesville Subdivision. The signal work consisted of repairing broken bond wires in connection with the work being performed by the track forces.

The Organization initiated the instant claim on the Claimant's behalf, contending that the Carrier had improperly assigned a junior employee rather than the Claimant to perform the signal work, and it requested that the Claimant be paid four hours at his overtime rate of pay, including his skill rate, to compensate for the loss of work opportunity. The Organization cited Rule 3 – Seniority Datum and Rule 4 – Seniority District and Roster as having been violated.

The Carrier denied the claim, stating that there was no violation of the cite rules because the Claimant was not the owner of the territory where the work was performed.

The Organization submitted an appeal, stating that the Carrier had not explained why the Claimant was not given preference to the overtime. It stated that the agreement affords rights, including the ability to secure work over junior employees.

The Carrier denied the appeal, stating that there are no requirements in the agreement to call the Claimant for an overtime call off of his assigned territory. It asserted that the Organization therefore had not met its burden of proof to demonstrate an agreement violation.

The parties discussed the matter in conference, but they were unable to resolve it. The matter now comes to us for resolution.

The parties' positions here are essentially the same as those described above. The Organization reiterates its position that the Carrier violated Rules 3 and 4 when it called a junior employee ahead of the Claimant to work an overtime assignment. It emphasizes the language of Rule 4(a), which provides that "Seniority rights shall extend over the entire system." The Organization argues that such language requires the Carrier to give preference to the senior employee when an overtime opportunity exists, and it submits that the Carrier violated that agreement provision when it afforded a junior employee the overtime opportunity in question without first offering that opportunity to the Claimant.

The Organization cites prior awards which have found that a Carrier should afford first preference to overtime work to a more senior employee, including PLB 7693, Award No. 15 and Third Division Award No. 30833. It states that the same conclusion should be reached here.

The Organization asserts that the Carrier's position is unpersuasive, as the Claimant held a Class II seniority date which was senior to that of the employee utilized. It also asserts that the Claimant does work the territory in question, citing a bulletin which amended his territory. The Organization concludes that the alleged violation has been proven, and it requests that the claim be sustained.

The Carrier maintains its position that the Organization has not met its burden of proving a violation of Rule 3 or 4. It reiterates that the location of the work in question was not on the Claimant's assigned territory, and it denies that there are any provisions in Rules 20 or 21 requiring it to call an employee for overtime off of his assigned territory. The Carrier avers that the use of the junior employee to perform the service in question is not prohibited by any agreement provision.

We have carefully reviewed the record, including the on-property correspondence, as well as the parties' citations of authority, and we do not believe the Organization has met its burden of establishing a violation of the cited agreement provisions. First, it seems clear that the work in question was not performed on the Claimant's assigned territory. The bulletin amending the Claimant's territory to include MP 41.9 was not effective until July 20, 2022, over three months after the date of the work in question. If anything, that bulletin confirms that the work was not on the Claimant's territory at the time it occurred.

With respect to the language of Rule 4, we do not believe it required the Carrier to offer the work to the Claimant ahead of the employee who was used. Under the Organization's interpretation, the fact that seniority rights extend over the entire system would require the Carrier to offer any overtime opportunities to the most senior employee on the entire system roster, even if their normal assignment was nowhere near the site of the work to be performed. We do not believe the establishment of a system roster in Rule 4 supports that interpretation.

We have also reviewed the cases cited by the Organization, and we do not believe they require a different result. In Award No. 15 of PLB 7693, the Board sustained the claim based on the specific finding that the claimant there "was assigned to the territory where the work took place." As noted above, that is not the case here. And while Third Division Award No. 30833 found that seniority should have been considered in assignment of overtime there, that case involved significantly different facts, and our interpretation of Rule 4 does not require us to reach the same conclusion.

It is fundamental that the Organization bears the burden of proving that a challenged action is contrary to the applicable agreement provisions. We do not find that a violation of the cited provisions has been established here, and 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 31st day of October 2024.