

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: (System Federation No. 42, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated the current working agreement, particularly Rules 4(c) and 7(a), when Carrier failed to compensate Communication Maintainer G. T. Langston for performing work after his normal work day on March 11, 1975.
2. That accordingly, the Carrier be ordered to compensate Communication Maintainer G. T. Langston two and two-thirds (2 2/3) hours at the punitive rate of pay.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

Claimant G. T. Langston, a monthly-rated Communications Maintainer, was called to work after his normal work hours, at 5:15 p.m., to clear up trouble in the Dispatcher's circuit in his territory. Claimant traced the problem to the Fayetteville, N.C. station leg and he "cleared the circuit by pulling freight leg off." (Employee's Exhibit A, p. 1)

At issue in the matter before us is whether Claimant is entitled, as claimed, to overtime pay for the time so worked under Agreement Rule 4(c), which reads:

"(c) Any service required on stand-by days, holidays and after his normal work day when no emergency* exists will be paid for at the overtime rate under the overtime rules of this agreement.

"*NOTE: An example of one kind of emergency is when dispatcher does not have clear circuit to handle train orders."

Thus, we must determine whether an emergency existed at the time Claimant was called out to work after his normal work day in order to decide whether claimant is entitled to overtime pay.

Petitioner makes the argument that the Dispatcher is not restricted in using any circuit to handle train orders (Rule 4(c) is silent on this point); that Dispatcher did have a "clear circuit" to handle his train orders through alternate means of communication; that the Dispatcher, in fact, advised Claimant he could use the automatic dial telephone to reach the Fayetteville station until the following morning and consequently released Claimant after Claimant pulled the freight leg off; and that there was no evidence of any halt or delay in any train movement, indicating that no bona fide emergency existed.

Petitioner concludes, on the basis of the above line of argumentation, that no emergency existed; that Carrier has produced no evidence of probative value that an emergency did exist; and that, therefore, Claimant is entitled to overtime pay for the work performed after his scheduled working hours.

Carrier's position is that the Dispatcher's circuit is a dedicated line, assigned exclusively to the Dispatcher for the movement, control and dispatching of trains. It is the only circuit which enables the Dispatcher by normal means to contact all points which are manned and at times receive train orders. This includes Dispatcher-controlled base radio stations. On the day in question, Dispatcher did not have a clear circuit because of noise and improper signalling, which necessitated calling in Claimant to locate the source of the trouble. The noise and improper signalling also precluded Dispatcher's use of base radio stations for train movements. Claimant found the trouble to be in the leg of the main circuit that served the freight station at Fayetteville. There being no other circuit available for proper use by the Dispatcher, Carrier asserts that an emergency did exist in that the Dispatcher did not have full utilization of all the functions of that circuit.

Carrier adds that automatic dial telephone circuits are not dispatcher's circuits, but rather are used by other than dispatchers for company business and not for the movement of trains.

Carrier further adds that Rule 4(c) does not define "emergency" in terms of any halt or delay in train movement, as alleged by Petitioner.

Petitioner's case hinges on Claimant's statement that the Dispatcher could use automatic dial phone to reach Fayetteville until the next morning, so that no emergency existed. But Petitioner overlooks the fact that

automatic dial phones or other alternative means of communication do not enable a Dispatcher to contact employees, such as train crews, if they are at a point away from a manned station. Unless the Dispatcher has a clear circuit he could not issue train orders under such circumstances to crews or other employees located at unmanned points or stations. A clear circuit, as used in the Agreement, would enable a Dispatcher to reach both manned and unmanned stations, thus enabling him to perform all his duties. The use of automatic dial phones does not constitute a "clear circuit" as used in Rule 4(c), for the reasons cited above.

We conclude, therefore, that an "emergency" existed at the time Claimant was called to work after his normal scheduled hours because the Dispatcher did not have at his disposal a "clear circuit"; i.e., full utilization of all functions of that circuit. On that date, a segment of the line in Claimant's territory had trouble so that the Dispatcher did not have control of all the base radio stations for train movements, nor was he able to signal each of the manned operation points because of noise and improper signalling.

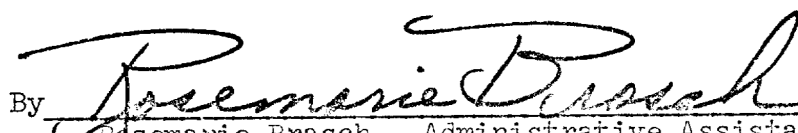
We are of the opinion that the situation described above constituted an "emergency" within the meaning of Rule 4(c) of the Agreement, in that an unforeseen malfunction occurred which required prompt action to provide Dispatcher with a "clear circuit" to handle train orders. The record clearly indicates (Employee's Exhibit A) that Claimant did find trouble at Fayetteville and that until repaired by him, the Dispatcher did not have a clear circuit to handle train orders for the reasons previously described. We must, therefore, deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of February, 1978.