

Award No. 5766

Docket No. SG-5782

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Florida East Coast Railway that Signal Maintainer G. M. Hodge be paid a minimum call of two hours and forty minutes at his punitive rate of pay.

EMPLOYEES' STATEMENT OF FACTS: On Friday, April 21, 1950, Signal Maintainer Hodge with assigned home station at Miami, Florida, in accordance with instructions of management and usual practice called the Wire Chief at 3:55 P. M. to report off duty and was informed by the Wire Chief that he had nothing for him.

On his arrival at home at 4:15 P. M. Hodge was informed by his wife that the Agent at Goulds had called account a highway crossing gate at N. W. Fifth St., Miami, being out of order. Prior to getting out of his wife's calling range she called to him and advised that the Agent at Goulds had again called and stated that the highway crossing gate had now been taken care of.

On Hodge's arrival at the crossing gate on Monday, April 24, during his regularly assigned working hours he discovered that temporary repairs had been made to the apparatus by some party not known at that time to Hodge.

Prior to this incident, on December 31, 1949, to be exact, another employe had been called at 8:30 P. M. and had been used to make repairs to this highway crossing gate; and upon learning of this, Hodge wrote to his superior officer and advised him that a repetition of such an occurrence would result in a claim being filed for a call by Hodge. This instant claim for a call was made in view of the warning given Hodge's superior officer subsequent to the December 31, 1949 incident.

Maintainer Hodge has a seniority date of 10-26-1920 as a Maintainer and a seniority date of 11-15-1925 as a Signal Foreman, indicating continuous service of approximately 30 years.

An agreement bearing effective date of April 1, 1948, as revised, is in effect between the parties to this dispute and by reference is made a part of the record covering the Brotherhood's claim.

This claim has been handled on the property in the usual manner without securing a satisfactory settlement.

All of the matters cited and relied upon by the Carrier insofar as they relate to the case as handled on appeal on the property have been discussed with the Employees.

OPINION OF BOARD: Claim is made for a minimum call of two hours forty minutes at punitive rate account of alleged failure to call Claimant as required by Rule 10.

Rule 10 "Subject to Call" reads as follows:

"Employees who are subject to call and desire to leave their home station will notify the Wire Chief, or in the event the Wire Chief cannot be reached will notify Chief Dispatcher, that they will be absent and about when they will return. Unless registered absent, regular assignee will be called."

The effective agreement bears date of April 1, 1948, as revised.

Assigned hours of Claimant are 7 A. M. to 4 P. M. one hour off for lunch.

Claimant asserts that on date in question he reported to the Wire Chief at 3:55 P. M. and at 4:05 P. M. left for home. Respondent contends that this call was received at 3:50 P. M. and that upon being notified at 3:54 that a crossing signal was out of order attempted to contact Claimant at several stations and failing called Claimant's home by Commercial Telephone.

The Organization contends that the call should be allowed since the work involved was on the Claimant's assigned territory and as such accrued to the employe then on maintenance duty; and that inasmuch as he had not reported absent as provided in Rule 10 he was entitled to compensation for all work arising in his section.

The Respondent asserts that under the circumstances it was fully justified in calling a maintainer from adjoining section to the scene, as was the watchman in temporarily patching the broken gate.

The record indicates that Respondent exercised reasonable diligence in attempting to contact Claimant and likewise in directing Maintainer Reithmaier not to make any repairs.

It is likewise clearly evident that no work in the nature of repairs was performed on the date in question. No work having been performed the Claimant, therefore, was not deprived of any work.

This Board has held in numerous awards that a carrier may (as here) take any action deemed necessary to meet an emergency.

Such steps were taken here by the Respondent and Claimant suffered no contractually compensable loss thereby.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

That the Carrier and the Employee involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of May, 1952.