

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Marion Beatty, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Atchison, Topeka and Santa Fe Railway System that:

Assistant Signalman J. W. Lancaster, with Class C seniority date of 3/1/51 be paid for 19 hours at his straight-time rate of pay on April 28 and 29, 1954, which is the difference between the hours he was paid and the hours paid to Assistant Signalman R. L. Davis, a junior employe with Class C seniority date of 4/1/51, on the dates in question. (Carrier's file No. 132-19-A-1).

EMPLOYES' STATEMENT OF FACTS: The claimant, Assistant Signalman J. W. Lancaster, with a seniority date of March 1, 1951, in Class C covering Assistant Signalmen and Assistant Signal Maintainers was regularly assigned to Signal Gang No. 2 on the Southern Division which was located at Brownwood, Texas, when this case originated. The gang was engaged in completing work and checking equipment in connection with the installation of C.T.C. between Brownwood and Ricker, Texas, which was placed in service at 2:01 P. M. on April 28, 1954.

At 7:00 P. M. on April 28 the claimant was relieved by Signal Supervisor J. A. Lusk for the day while Assistant Signalman R. L. Davis, with a seniority date of April 1, 1952, in Class C, was retained on duty and continued to work until 5:00 A. M., April 29, 1954.

For the period of working time involved by these two employes the claimant was allowed a total of 12 hours, and the junior Davis was allowed a total of 21 hours, plus punitive rate for his regular hours worked on April 29, 1954.

The claimant was available and willing to work had he been so directed.

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

There is an agreement between the parties to this dispute bearing an effective date of October 1, 1953, and is by reference made a part of the record in this case.

In fact, in all likelihood, the group of employes with whom Davis was working would have probably completed their assigned task ahead of the group with whom Lancaster was working, if the former group had not encountered unforeseen difficulty in checking and clearing the signal circuits at Ricker. Since the Carrier was in no manner responsible for the emergency situation which subsequently developed at Ricker and had no possible means of foretelling when the trouble would be located or how much overtime would be involved, it is obvious that the Carrier did not act arbitrarily or capriciously when it assigned Claimant Lancaster to work with a group of employes in the vicinity of Brownwood and Davis to work with a group of employes in the vicinity of Ricker. If the unexpected trouble had developed in the vicinity of Brownwood instead of in the vicinity of Ricker, the emergency situation would have been reversed and Lancaster would have worked more overtime than Davis.

The Carrier also contends that since Davis had been engaged on the work at Ricker since 10:00 A. M., April 28 and (along with the other employes who were also actively engaged in that work when Lancaster completed his service some three miles away at 7:00 P. M.) was familiar with what had and what had not been done in checking the signal circuits at Ricker, it would have been impractical and inefficient to have substituted Lancaster for Davis on the unfinished work. It is the prerogative and right of the Carrier to continue an employe such as Mr. Davis on overtime at the completion of his regular assigned hours to complete the work on which he is engaged. Also, the Carrier was under no obligation to underwrite the additional overtime expense that would have been claimed by Lancaster for the time it would have taken him to walk the three miles to Ricker to displace Davis, following which the latter would also have claimed penalty overtime rates for the time he would have devoted to walking to his designated on-and-off-duty point at Brownwood.

Without prejudice to its position, as previously set forth herein, the Carrier desires to call attention to the fact that the Employes' claim for nineteen (19) hours in behalf of Claimant Lancaster is also improper and contrary to the Board's consistent holding that the right to work is not the equivalent of work performed under the overtime and call rules, and that the payment of pro rata rate is all that is required under such circumstances. See Third Division Awards Nos. 5195, 5261, 5419, 5437, 5546, 5548, 5708, 5764 and others. Since Davis worked only ten (10) hours (from 7:00 P. M. to 5:00 A. M.) in excess of the time worked by Claimant Lancaster, the claim is necessarily restricted to that amount under prior interpretations of the Board.

In conclusion, the Carrier respectfully asserts that the claim of the Employes in the instant dispute is entirely without merit or support under any Agreement rule in effect between the parties and should be denied in its entirety.

All that is contained herein is either known or available to the Employes and their representatives.

OPINION OF BOARD: The Brotherhood interprets its agreement to require the Carrier to observe seniority in making daily assignments to jobs that will accrue overtime.

Their agreement with this Carrier has no such provision in it. There was no violation of the agreement in the case at hand.

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

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 there was no violation of the Agreement.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 25th day of September, 1957.