Award No. 8188
Docket No. SG-7921

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Louisville and Nashville Railroad Company that:

(a) The Carrier violated the agreement when it did not call Signal Maintainer C. B. Tompkins of the Evansville Division on November 6, 1953, to perform signal work.

(b) Signal Maintainer C. B. Tompkins be allowed a minimum call of two hours and forty minutes at the punitive rate for not being called to perform work on his assigned territory.

EMPLOYES' STATEMENT OF FACTS: C. B. Tompkins is regularly assigned as Signal Maintainer with headquarters at Madisonville, Kentucky.

About 8:40 P. M. on Friday, November 6, 1953, signal trouble developed on territory assigned to Claimant C. B. Tompkins. No attempt was made to call Tompkins. Carrier called a Signal Maintainer from the adjoining territory.

The claimant had conformed with the provisions of Rule 18 (a) and had notified operator at Madisonville where he could be called. He was available; he could have responded promptly, if called, and was willing to perform any work necessary to correct the signal failure.

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

There is an agreement between the parties to this dispute bearing an effective date of February 16, 1949, which has been revised to October 1, 1950. This agreement is by reference made a part of the record in this case.

POSITION OF EMPLOYES: It is the position of the Brotherhood that the Carrier violated the provisions of the Signalmen's Agreement when it called a Signal Maintainer from an adjoining territory to perform signal work on the territory assigned to the claimant. In support of the Brotherhood's position on this point, Rule 18 (a) is hereby quoted:

forty minutes at time and one-half rate. If held on duty more than two hours and forty minutes outside of regular hours, they shall be paid on a minute basis at time and one-half or double time rate, as the case may be. The time of employes so notified in advance will begin at the time required to report and end when released. The time of employes so called will begin at the time called and end at the time they return to designated point at home station."

Under provisions in Rule 17 employes are paid a minimum allowance of two hours and forty minutes at time and one-half rate. The time of employes will begin at the time required to report and end when released. The intent of Rule 17 would be violated by an affirmative award in the instant claim. The farther a maintainer could get from home headquarters would mean the longer the time involved in getting to location of trouble and thereby result in delay of trains. Also, carrier would be penalized for additional overtime.

The very nature of the assignments of maintainers imposes the requirement that they be where they can report promptly to their headquarters tool house in response to trouble calls.

To show importance of having maintainers where they can be reached without undue delay this board's attention is respectfully called to previous Third Division Awards Nos. 5768, 5769; also 3992 wherein the employe is required to be at a location here he is able to respond promptly.

Should perchance an affirmative award be rendered there is certainly no basis for payment at time and one-half, as this Board has consistently held penalty payment is due only when work is performed. For example, Third Division Award No. 6241 states:

"Since these periods of time were not actually worked claimants are not entitled to reparation at the punitive or overtime rate."

It is necessary and customary on all railroads for employes responsible for the maintenance in continuous operation of railway facilities to be located where they can respond to emergency call without undue delay. Provisions are made in Rule 18 for anyone desiring to leave his home station to register off call. It is not conceivable that a maintainer could be considered as available when he is 21 miles from headquarters and 9 miles off his assigned territory.

The carrier submits that in view of all the circumstances, claim should not be sustained..

OPINION OF BOARD: The confronting claim for a call at the punitive rate made in behalf of one C. B. Tompkins, classified as a Signal Maintainer, with headquarters at Madisonville, Kentucky. It is alleged that the Carrier failed to call Claimant on November 6, 1953, to perform certain repair work at about 8:40 P. M., on this date, said repair work being required in his territory. It is further alleged that Rule 18(a) was violated by the failure to call Claimant. Rule 18(a) provides:

"(a) Employes assigned to or filling maintenance positions will notify the management where they may ordinarily be called. If on specific occasions they desire to be off call, they will so advise the person designated for the purpose. Unless registered off call, they will be considered as available and will be called for service to be performed on their assigned territory and will respond as promptly as possible when called."

The Organization took the position that the above quoted rule was clearly violated when the Respondent failed to call Claimant for the work in question. It was asserted that while Claimant was available no attempt was made to call him (Claimant) and further, that the said Claimant, not

having registered off call, was entitled to be called to perform any signal repair work which was required in his territory. It was pointed out that the operator had been informed of Claimant's whereabouts, and that he (Claimant) was not required to remain in the place where he was ordinarily called. Lastly it was asserted that Claimant was capable of responding to the call "promptly" within the meaning of the Rule.

The Respondent took the position that it was under no obligation to call the Claimant in the instant case for the reason that he (Claimant) had in effect removed himself from the territory by being 21 miles from headquarters at the time when his services might have been utilized, said point being beyond the point where the call could have been answered promptly. It was asserted that Respondent retained the prerogative to make a rule requiring an employe, as here, to register off call before departing for a destination, so far removed from headquarters as to render it impossible to render prompt service within the meaning of Rule 18(a). The Respondent further contended that this claim if sustained could only be allowed at the pro rata rate since no time was worked and no service was performed. As to the claim on its merits Award 5768 was cited as controlling.

We are of the opinion that the controlling rule here, that is Rule 18(a) is clear and unambiguous. An employe who has not registered off call is to be considered as available and is to be called for service for any work required to be performed. This rule however requires an employe so called to respond promptly.

That there was work to be performed on Claimant's territory at the time in question is admitted. That Claimant had not registered off call is likewise admitted, as is the fact that no attempt was made by the Respondent to call him. Here Claimant by indicating where he could be reached affirmatively indicated his willingness to answer a call if his services were required. While the Claimant is required to answer as promptly as possible there is no definite time limitation as appeared in the rule that was considered as controlling in Award 5768, relied upon by the Carrier. We are of the opinion that the question of being able to report promptly is one that must be considered in light of surrounding circumstances. Here there is no evidence that the weather was bad. There is evidence that the first train movement was not due at the point where the trouble arose for some hour and fifty minutes after the time this call was initiated. While there is evidence in the record that Claimant had on occasion answered prior calls from Sebree there is no evidence that the Carrier was on these occasions subjected to greater expense than would have been incurred had the call been answered from Madisonville. We are of the opinion that to deny this claim would have the effect of placing a more binding time limit requirement than is presently contained in the rule. This we have no authority to do.

We are of the opinion that the Respondent's contention that this claim, if valid, should be sustained only at the pro-rata rate was properly answered in Award 3277 wherein we stated:

> "The penalty rate for work lost because it was given to one not entitled to it under the Agreement, is the rate which the occupant of the regular position to whom it belonged would have received if he had performed the work. Awards 3193 and 3271. If Claimant had been permitted to perform the work he would have received time and one-half for the Sunday work and time and one-half for the overtime work on Monday. The latter for the reason that the Monday work on the platform commenced at 7:30 A. M. and terminated at 8:00 P. M. If the employes entitled to the work had performed it, they, too, would have been entitled to two and one-half hours at the overtime rate. Consequently, the claim for two and one-half hours at the overtime rate on Monday is properly sustainable."

For the reasons stated we are of the opinion that his claim is meritorious.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes 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 violated the effective agreement.

AWARD

Claims (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1957.

DISSENT TO AWARD NO. 8188, DOCKET NO. SG-7921

The Referee's ratiocination in this award is based on conjecture and speculation, and completely ignores the fact that when a signal failure ties up the railroad and a signal maintainer is needed as promptly as possible—the Carrier is not required to meet this emergency situation by calling an employe who has disregarded instructions and gone 21 miles from his headquarters without registering off call.

The Employes conceded that a signal maintainer could get so far from his headquarters that he did not have to be called for service on his assigned territory, even though he was not registered off call.

Here, on previous occasions, the Carrier had experienced delay and added expense because Claimant had gone to Sebree without registering off call. As a result the Carrier's Signal Supervisor issued instructions for Claimant to register off call if he was going to Sebree. No provision of the Agreement restricted the Carrier's right to issue the foregoing instructions. It is elementary that the Carrier has the right to make rules for the maintenance of its signal system. **Award 2919.**

The Referee was shown that this Division consistently holds that it will not substitute its judgment for the Carrier's unless the Carrier has acted arbitrarily or in bad faith. The Referee was cited **Award 5768** as showing that thirty (30) minutes was a reasonable time between the time called and reporting for duty at the designated point. The Referee was also cited **Award 3992** where Referee Carter held that a signal maintainer could not "respond promptly" when he was 11 to 13 miles from his headquarters. Obviously, **Awards 5768 and 3992** show that the Carrier was not arbitrary. The fact remains that Claimant could not "respond as promptly as possible" from Sebree as he could if he had been at home where he was ordinarily called.

"Promptly," in railroad parlance, means being prepared and ready to go at the moment. The Carrier's Signal Supervisor knew when Claimant was called at Sebree he had to get his wife and baby ready, drive 21 miles to Madisonville, go into his house and change into work clothes, and then go to his headquarters to start "chasing the trouble".

The Referee does the Carrier and the industry a great injustice by arbitrarily establishing a definition for "promptly as possible" at variance with the common-sense meaning it has always had in emergency situations on the railroad.

The Referee's allowance of time and one-half for time not worked is contrary to **Award 7207** on the same property.

For the foregoing reasons, we dissent.

/s/ C. P. Dugan
/s/ J. F. Mullen
/s/ R. M. Butler
/s/ W. H. Castle
/s/ J. E. Kemp