Award No. 8827
Docket No. SG-8585

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Illinois Central Railroad Company that:

(a) The Carrier violated the Signalmen's Agreement effective October 1, 1955 (as amended), when on July 9 and 10, 1953, it assigned overtime work to junior employes of a gang when the senior employes were available and desired the work.

(b) Signalman R. B. Sandifer, Assistant Signalman W. A. Morris, and Assistant Signalman E. O. Rowley be compensated at their respective overtime rates for the acutal hours worked by employes with less seniority on July 9 and 10, 1953.

EMPLOYES' STATEMENT OF FACTS: On July 9, 1953, Signal Gang No. 2, Louisiana Division, under Signal Foreman C. W. McDaniels was working at Southport Junction, Louisiana. During the day Foreman McDaniels instructed the claimants to leave Southport Junction and finish the day working at the Match Factory Crossing and to return to the camp cars assigned to Gang No. 2 at 4:00 P. M. Signalman Sandifer was in charge of the two Assistants, Morris and Rowley.

On July 9, 1953, the employes of Signal Gang No. 2, under Foreman McDaniels worked from 4:00 P. M. until 12:00 P. M. On July 10, 1953, which was continuation of the night of July 9, 1953, they worked from 12:01 A. M. until 7:00 A. M., a total of fifteen (15) hours, all of which was on the overtime rate.

Three employes under Foreman McDaniels who worked the overtime were junior in seniority to Signalman Sandifer and Assistants Morris and Rowley, who were working with Sandifer.

At the time the overtime was performed by the junior employes, the Foreman and Test-Man, who was acting Supervisor, was aware that they were using junior employes and that the senior employes would prefer

the assignment requiring overtime, and much valuable time would be lost in trying to familiarize them with the work to be completed.

The undersigned hereby certifies to the best of his knowledge all statements made herein are true.

/s/ George Pipas
Signal Engineer

SEAL

The above statement sworn and subscribed to before me this 17th day of April, 1956.

/s/ Patricia G. Nelson
Notary Public

My Commission Expires July 7th 1959"

To sustain the Employes' position in this matter would read into existing rules a practice that is lacking in practicability, economy, or necessity and would be at variance with the National Transportation Policy and the Interstate Commerce Act.

In handling this claim on the property, the Employes have advanced no rule to support their claim. The reason for this is there is no basis or rule in the agreement to support them. As a matter of fact, the General Chairman admitted in his letter of May 29, 1954, previously quoted herein, that the claim was not supported by any rule of the agreement. Should the position of the Employes be sustained, your Board would go beyond its function of interpreting existing provisions in the agreement between the parties as delegated by the Railway Labor Act, and in effect write a new rule into the agreement. The Board is referred to First Division Awards 7057 and 14566; Second Division Award 1474; Third Division Awards 389, 871, 1230, 1609, 2612, 2622, 3407, 4763, and 5079; Fourth Division Award 501, and similar awards on all four divisions of the National Railroad Adjustment Board as evidence of such findings.

There is no basis for the claim, and it should be denied.

All data in this submission have been presented to the Employes and made a part of the question in dispute.

(Exhibits not Reproduced.)

OPINION OF BOARD: The facts briefly stated are as follows:

On July 9, 1953, the foreman of Gang No. 2, directed Claimants to work at one point and the foreman and the remainder of the gang proceeded to another point about 9 miles removed. Claimants returned to camp car headquarters at 4:00 P. M., as directed. Because of delays encountered, which could not have been anticipated the foreman and the remainder of the gang worked throughout the night at overtime rate. The Claimants held seniority over the men who were with the foreman and are claiming that they should have been given an opportunity to perform the overtime service.

Therefore, the issue is whether these Claimants were entitled to perform this work which was not a part of their regular assignment.

As usual numerous awards are cited by both sides in support of their respective positions, many of which this referee has read in relation to other awards, but it is interesting to note in passing that in one award cited in behalf of the Organization involving the craft of the Claimants here, viz., Award No. 495, occurs this language:

> "* * * the fact is clearly indicated that the force was reduced to the extent outlined, and that the same rule that would apply **to force reduction** would equally apply when men are laid off." (Emphasis supplied)

No one is contending here that the "force reduction" rule is applicable.

The latest award cited and relied upon by the organization is 6756, but even in that award, which stresses the importance of the recognition of seniority in all circumstances, says inter alia

> "* * * Unless the record discloses some other reason for not using him Claimant, by virtue of his superior seniority status, was entitled to the work before junior employes were called to perform it."

The quoted language recognizes that there are times when the Management must be given some discretion as to whom to employ, and this is the reason the Carriers have been unwilling to yield to a rule making recognition of seniority mandatory in all cases. The fact that some Carriers "may" give such recognition does not make it mandatory. Award 8284.

Claimants contend they were only about nine miles away from the operation where the overtime work was being performed; that there was a telephone nearby; that they could have been reached and on the job in a few minutes and were as qualified to do the work as those men, the junior employes, who did the work.

In our recent award 8073, where we had the identical problem involving the same Organization we held that in absence of a specific rule the Carrier was not bound to recognize seniority, and in that case the distance involved was only 3 miles, whereas in our case as already noted the distance was about 9 miles.

Under the circumstances we feel the Carrier was justified in using the junior employes; that it did not violate the agreement and the claim must be denied.

See also Award 3096, Second Division.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 15th day of May, 1959.