

Award No. 9394

Docket No. SG-8973

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roscoe G. Hornbeck, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**BOSTON AND ALBANY RAILROAD
(New York Central Railroad Company, Lessee)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Boston and Albany Railroad (New York Central Railroad Company, Lessee):

In behalf of R. J. Tarte for all overtime hours worked by J. L. Angell on May 30, 1955, at Worcester, Mass., in connection with derailment, at the rate of pay covered by the agreement for the service performed.

EMPLOYES' STATEMENT OF FACTS: Signal Helper R. J. Tarte is regularly assigned as Signal Helper on Section #2.

On Memorial Day, 1955, a derailment of cars occurred on the crossover from track #4 to yard at Worcester, Mass., which is located on Section #3.

J. Angell, who is a member of the Boston Gang, was called to perform service in connection with this derailment.

R. J. Tarte, who was assigned to section adjacent to where the derailment occurred, was senior to J. Angell. He was available but was not called.

Claim was submitted to Signal Supervisor L. B. O'Brien, by R. J. Tarte, under date of May 31, 1955, as follows:

"I wish to claim all hours overtime worked by J. L. Angell on Memorial Day at Worcester, Mass., in connection with the derailment there. I am claiming these hours at the rate of pay prescribed by the agreement for such work."

Signal Supervisor L. B. O'Brien replied under date of June 3, 1955, as follows:

"Relative to your letter of May 31, 1955, in which you claim 'all overtime worked by J. L. Angell on Memorial Day at Worcester, Mass., in connection with the derailment there at the rate of pay prescribed by the Agreement for such work;'

of the applicable Agreement. It is therefore respectfully requested that the Board deny this claim.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant Mr. R. J. Tarte was, at the time involved in this Claim, a Signal Helper on Section 2, Boston and Albany Division, Eastern District, New York Central Railroad. He was stationed at Framingham, Massachusetts. Mr. J. L. Angell was assigned to the Boston Floating Signal Maintenance Gang, as a Signal Helper and lived at Worcester, Massachusetts. There also was a Worcester Floating Signal Maintenance Gang stationed at Worcester, which is on Section 3 of the Division.

During the night of May 29, 1955, a train of twenty-seven cars was derailed at Worcester, three of the cars leaving the tracks and causing damage to the interlocking equipment. By reason of the derailment it was necessary not only to replace the cars on the tracks but also to make repairs to the interlocking equipment. A call was made for a Signal Maintainer, a Foreman, three Mechanics and a Helper. Mr. Miles was first called at 1:30 A. M. and worked until 4:00 A. M. when he was taken ill and left the job. He reported the necessity for a larger force to complete the work which was later called. Two of this force reported at 4:00 A. M., one at 7:30 A. M. and two at 8:00 A. M., one of whom was Mr. Angell.

Mr. Tarte, who is senior to Mr. Angell was available but was not called and claims that because of his seniority he should have been called instead of Mr. Angell.

The Claim is based on Rule 20(c) of the applicable Agreement, which provides:

"Seniority rights of employes will be restricted to the territory over which one Signal Supervisor has jurisdiction."

It is admitted that a Signal Supervisor has jurisdiction over a Division.

Carrier maintains that the work involved was an "emergency". That Claimant being assigned to Section 2, as bulletined, was not entitled to his seniority rights in the assignment of the emergency work on Section 3, where the derailment occurred. That Signal Helper Angell, as a member of the Boston Floating Signal Maintenance Gang, and living at Worcester, had the right to perform the work assigned on Section 3 as a part of his regular assignment.

On the record, it is conceded that the derailment created an emergency but it is insisted that, notwithstanding, the Claimant because of his seniority was entitled to be assigned to the job. In the discussion it is claimed that there was no emergency.

The Carrier, although claiming that Mr. Angell had a preferential right to be assigned to the work, at all times from the early letters progressing the Claim has insisted that it acted in an emergency.

Carrier also asserts that the seniority rights stated in Rule 20(c) extended only to displacement and bidding privileges. That long accepted

practice was, in the situation presented, to first call an available qualified employe in the home section of the derailment; then if additional employes were needed employes from the maintenance gang would be called, and only after that was done would call be made to adjoining sections.

This may be the practice, but for how long or that it has been accepted does not appear. It is said that it is not denied. By invoking Rule 20(c) the Organization maintains that there is no accepted practice to the contrary.

Rule 20(c) conversely stated, accords seniority rights to Claimant throughout the District. If these rights have been further defined by accepted practice the Carrier should establish it by proof.

We are of opinion that the Carrier had the right within its managerial prerogative to consider the derailment and the consequences thereof as an emergency.

As we understand, the Awards of this and other Divisions of the Board recognize that the Carrier in an emergency has broader latitude in naming employes than in a normal situation. In an emergency it may assign such employes as good judgment in the situation dictates and it will not be obligated to exercise that care and thoughtfulness in its action which would under ordinary conditions be required.

It has been urged with considerable logic that there was no emergency as is shown by the fact that it was four hours after Mr. Miles left the job until Mr. Angell reported for work.

There were two aspects to this derailment. The three derailed cars had to be replaced on the tracks. The interlocking equipment had to be repaired. Mr. Miles' sickness also contributed to the emergency. It was he who suggested the necessity of calling additional workmen.

The fact that Mr. Angell lived in Worcester and Claimant lived twenty-two miles distant may have influenced the Carrier in its action in calling Mr. Angell. The time which elapsed between Mr. Miles leaving the job and the time Mr. Angell reported does not necessarily fix the time when he was called.

Upon the whole development, we cannot say that the Carrier should be charged with a violation of the Agreement in assigning Mr. Angell instead of Claimant to the work in the emergency which we find the Carrier had the right to believe existed.

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 Employe 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 had jurisdiction over the dispute involved herein; and

That we do not find the Agreement to have been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of May, 1960.