

Award No. 9747

Docket No. SG-9174

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, 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 Signalmen's Agreement when it assigned or otherwise permitted other than the regularly assigned Signal Maintainer to perform signal work on the territory on which Signal Maintainer J. G. Dougherty is regularly assigned, on September 4th and 5th, 1955.

b. Maintainer J. G. Dougherty be compensated for 15½ hours at his overtime rate to compensate him for the service he was deprived of by not being used to perform the work on his territory on September 4 and 5, 1955.

EMPLOYEES' STATEMENT OF FACTS: Claimant J. G. Dougherty is a regularly assigned Signal Maintainer with headquarters at Lebanon, Kentucky.

On Sunday, September 4, 1955, there was a derailment at Rowland, Ky., which is on the territory assigned to J. G. Dougherty.

Signal Maintainer R. F. Harris, who is assigned to territory adjoining the territory of J. G. Dougherty, was called to perform the signal work involved as a result of the derailment. He was called at 5:30 P. M., September 4, 1955, and was released at 9:00 A. M., on September 5, 1955, making a total of 15½ hours overtime.

Claimant J. G. Dougherty was not registered off call and was available for calls. He is the regularly assigned Signal Maintainer on the territory where the derailment occurred and is, therefore, entitled to the work to be performed on that territory, unless registered off call.

"Mr. Dougherty complied with rule 18 by notifying the management where he could ordinarily be called, which was the phone of the people downstairs, where he lived. The people were not home this particular afternoon and if their phone rang Mr. Dougherty who lived upstairs didn't hear it ring."

Here is proof, provided by the employees, that Mr. Dougherty missed the emergency work in question because he was not available; not because of lack of effort on the part of management to call him.

Rule 18(a) puts responsibility on employees and management alike. It requires the employee to be available, when needed, at the point he has designated for receiving calls, and it requires the carrier to call him for available emergency work on his territory.

In this case the record is conclusive that management met its responsibility under the rule, attempting to call Mr. Dougherty not once but several times over a 15-minute period, without success. The record is also clear as to why management could not contact Mr. Dougherty. The people who ordinarily take calls for him were away from home on the Sunday afternoon in question and Mr. Dougherty had apparently made no arrangement to be near enough to hear and answer the telephone in case he was needed. Actually, Mr. Dougherty was subject to criticism because of his apparent negligence in not making arrangements to protect the service in emergency. And it ill becomes the employees to attempt to force payment by the carrier in the circumstances.

There is no basis, under the agreement or otherwise, for the claim and it should be denied.

All relevant data submitted in support of the position of the carrier has been submitted to the duly authorized representatives of the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant held a regular assignment as Signal Maintainer, for Carrier with headquarters at Lebanon, Kentucky. His assignment consisted of five consecutive days, Monday through Friday, with rest days Saturday and Sunday.

On Sunday, September 4, 1955, one of his regular rest days, derailment occurred at Rowland, Kentucky, on the assigned territory of Claimant. The station at Lebanon is closed on Sundays, but the Conductor of Train No. 65, having stopped at Lebanon was in touch with the train dispatcher by telephone and at his request was told to contact the Claimant at Lebanon and arrange for him to make the necessary signal repairs at Rowland due to the derailment. The record shows that between 4:15 and 4:30 P. M. on October 4, 1955, the train conductor made three or four calls by telephone to reach the Claimant, but received no answer, at the location where he had advised Carrier he could be reached for any calls. With this information furnished to the Dispatcher, the train conductor was requested to call Signal Maintainer Harris, who also lives at Lebanon, but whose regular assignment was on a district different from that of Claimant. Mr. Harris, promptly received the call from the train conductor and left for Rowland to make the necessary signal repairs. Harris worked fifteen and one-half hours making

the repairs for which he was paid at the time and one-half rate. It is for this work performed by Harris that Claimant contends he was wrongfully deprived of the work when Carrier used Maintainer Harris on his district, in violation of the provision of Rule 18 (a).

Carrier contends that Claimant was considered as being available for service and subject to call on his rest day, for the reason he was not registered as **off call** as provided by Rule 18 (a) of the Agreement. Further contention is made by Carrier that Claimant could not be located when he was called, as contended here, by the train conductor, that Carrier was justified here to call the employe Harris to perform the emergency signal work required at Rowland, Kentucky.

From the record before us we must find that under the provisions of Rule 18 (a) Claimant here was available for duty and subject to call for service by Carrier. For all intents or purposes of the Rule, Claimant had expressed no desire to not be subject to call, nor had he registered off call, as provided by the Rule.

The record here shows that Claimant was available for service and was subject to call. But during the period between 4:15 P. M. and 4:30 P. M. Carrier through its train conductor at Lebanon made a diligent effort to locate Claimant on the telephone by calling three or four times, but could get no reply and the conductor was then instructed to call Maintainer Harris, who was reached by telephone and accepted the call. The Organization contends Maintainer Harris was not called until 5:30 P. M. or about one hour after the attempt was made to reach the Claimant. Carrier contends Maintainer Harris was called within fifteen minutes after failure to reach Claimant on the telephone.

The facts here show that the telephone, on which Claimant could have been reached, was located in a home occupied by someone other than Claimant in the downstairs portion of the location where Claimant resided. But these people were not at home during the period the calls were made to Claimant by the conductor and the Organization states that if the calls were made the Claimant did not hear the telephone ring in Claimant's upstairs portion of the residence. With this we conclude that Carrier certainly complied with its obligations under Rule 18 (a). Carrier did everything it could under the emergency circumstances to call Claimant, and certainly was under no obligation here to use any other means to locate the Claimant and it was properly within its rights in calling Signal Maintainer Harris. We can find nothing in the rules which require Carrier to go beyond the provisions of the Rule and Claimant cannot hold Carrier responsible under the facts here, where the Claimant himself did not make some arrangement with his downstairs neighbor to take any calls during their absence. The claim does not support a sustaining award.

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1960.