

Award No. 9748
Docket No. SG-9175

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Missouri Pacific Railroad Company in behalf of:

V. Smith for 7 hours and 40 minutes at punitive rate account of section man used by Signalman L. D. Adams instead of Assistant Signalman V. Smith on August 7, 1955.

EMPLOYES' STATEMENT OF FACTS: Claimant V. Smith is regularly assigned as an Assistant Signalman working with and under the direction of Signalman L. D. Adams, with common headquarters at Myrick, Missouri.

About 6:00 A. M. on August 7, 1955, Signalman L. D. Adams was called for service account of storm which had caused a tree to fall on pole line, resulting in trouble to the signal system. Signalman Adams did not call Assistant Signalman Smith but used a section man to assist him in repairing the signal trouble.

Assistant Signalman V. Smith was not registered off call and was available for calls. He is the regularly assigned Assistant Signalman on the territory where the trouble occurred and is, therefore, entitled to the work to be performed on that territory, unless registered off call.

In progressing this claim on the property, General Chairman F. E. Shaver directed a letter to Assistant General Manager G. M. Holzmann, under date of October 1, 1955, as follows:

"Reference to the claim of 7 hours 40 minutes at punitive rate favor of Mr. V. Smith Assistant Signalman, Myrick Mo., for August 7, 1955, account not called for emergency work, by Signalman L. D. Adams, Myrick, Mo.

This claim was not allowed by Supt. Austin in his decision dated September 6, 1955, File D-844. His decision has been re-

It is the position of the Carrier that the Agreement does not require it to utilize a signalman as a messenger to travel to the residence of an assistant signalman who has made no arrangement for prompt contact in off-duty hours when needed for emergency work. We are of the opinion that such requirement is not contained in the Agreement even when there is no emergency to say nothing of delaying the signalman for such messenger service when an emergent situation prevails.

Assuming, but not admitting, the work here involved was the exclusive right of the signalman craft, we think it is obvious no employe can lay claim to work for which he is not available and in the circumstances here involved this claimant was not available.

We disagree completely with the position of the General Chairman as stated in his letter of October 1, 1955, Carrier's Exhibit "A," quoted below for ready reference, if this statement is intended as a contention of Agreement requirement.

"It is my position that the signalman is in charge of the maintenance of the territory assigned to him, and to the men assigned to work under his jurisdiction. Knowing that an emergency could come up at any time when the services of his assistant would be required, it was Mr. Adams place to make certain that he knew exactly where and how to locate his assistant, from the moment the assistant was first assigned to the job."

There is no requirement whatever of this kind in the Agreement and a claim cannot be supported on that basis. It is, of course, important for the signalman to know of, and have available, the means of calling his assistant in an emergency. In this instance he knew about where the assistant was located but the difficulty was that that assistant had provided no practical means of timely contact. This is not an obligation of the Carrier.

It is therefore the position of the Carrier that there is no Agreement support for this claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts of record show that Claimant held a regular assignment as Assistant Signalman, under Signalman L. D. Adams with headquarters at Myrick, Missouri. Both Adams and Claimant resided at Lexington, Missouri, which is located at about two miles from Myrick.

Under the Agreement between the parties, signalmen and their assistants, are subject to call for service on their rest days, unless they are registered as off call. See Rule 6 (b) of the effective Agreement.

On August 7, 1955, about 6:00 A. M., one of Claimant's rest days, a call was made to Signalman Adams, that a signal was out, and some damage due to falling trees caused by a storm at Myrick, and Adams proceeded in his car to Myrick to repair the damage. There is some evidence here, that Claimant had shortly prior to claim date, just moved his residence to Lexington. That the Claimant had notified Mr. Adams where he had recently moved which was some four blocks from Adams residence and he could be reached by Adams at the location described. No mention is made in the record that Claimant had a telephone over which he could be reached by Mr. Adams.

Nor did Mr. Adams when he received the call to go to Myrick make any effort to locate or contact Claimant. On arrival at Myrick, Adams discovered the work required to repair the storm damage, would necessitate that he have some assistance, and used the service of a section man to help him. Adams made no effort at this point to call or locate his assistant. For the work performed by the section man, Claimant requests payment for seven hours, 40 minutes at the punitive rate.

Carrier contends that when Adams received the call to go to Myrick, he was advised a signal was out at Myrick and it was not until his arrival there that he knew he would need some assistance to help him remove a fallen tree. He used the services of a section laborer, for the assistance required in removing the debris. Carrier further contends Claimant was not available for service and for the further reason it had no obligation to call Claimant when the work performed by the section laborer was not work to be performed, such required the skill of Signalmen and was not exclusive to that craft.

Under the provisions of Rule 6 (b) applicable here, it appears that the Claimant had advised Mr. Adams where he could be located and that since the Claimant was not registered absent, he must be considered as available for service as provided by the rule. It is true that Adams made no effort to contact Claimant when he received a call to go to Myrick. Adams no doubt assumed he would require no assistance when he received the call. Later developments showed that was bad judgment on his part. On his arrival at Myrick, he found conditions such that he would require assistance and used the services of a section laborer. Here again Adams made no effort to call or contact Claimant, although he knew Claimant was available for service.

Many of the citations of previous awards furnished us by the parties are not applicable here. Rule 6 (b) of the Agreement here is not ambiguous and we must conclude that Carrier did not comply with the provisions of the rule in that it made no effort whatsoever to locate Claimant. Adams did have information where Claimant resided, he knew Claimant did not have a telephone over which he might be reached. There is no provision in the rule that Carrier may be relieved of its responsibility, such as in the instant case, where it has made no effort to carry out that responsibility as set forth in the rule. Award No. 3292 of this Division held that in a situation very similar to this case, that the duty to make the call rests on Carrier, the duty to respond rests on the employee. We agree with the principles upheld in that Award, as applicable here.

Claim should be sustained but only for compensation at the pro rata rate where this Division has stated in many cases that where work is not performed the punitive rate does not apply.

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

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 Agreement.

AWARD

Claim sustained per Opinion and Findings.

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.

DISSENT TO AWARD NO. 9748, DOCKET NO. SG-9175

Award 9748 is based upon the erroneous premise that Carrier is required to make some undisclosed effort to obtain the services of an assistant signalman in an emergency, who admittedly has provided himself with no means for immediate contact, when it develops, upon reaching the scene of the trouble, that assistance is required in the performance of laborers' work which is not exclusive to the Signalmen's Craft, viz., the removal of a fallen tree in the instant case, and when a section laborer is readily available to render such assistance.

For the foregoing reason, among others, Award 9748 is in error and we dissent.

/s/ J. E. Kemp

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ C. P. Dugan

/s/ J. F. Mullen