

Award No. 11333

Docket No. SG-10957

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chicago, Rock Island and Pacific Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, particularly Rule 19, when it failed to call Signal Maintainer W. F. Berneking, with assigned headquarters at 45th Street, Chicago, Illinois, for overtime work on his regular assigned signal maintenance territory on December 19, 1957, and December 28, 1957.

(b) The Carrier now compensate Signal Maintainer W. F. Berneking for four (4) hours on December 19, 1957, and two and eight-twelfths (2-8/12) hours on December 28, 1957, at his punitive rate of pay account of the violation cited in part (a).
[Carrier's file: L-130-119]

EMPLOYES' STATEMENT OF FACTS: Mr. W. F. Berneking is regularly assigned as Signal Maintainer with headquarters at 45th Street, Chicago, Illinois.

Signal Maintainer Berneking acquired the above signal maintenance position by exercising his seniority and was assigned by Bulletin No. 19 dated October 20, 1957.

On December 19, 1957, signal trouble occurred on the signal maintenance territory of Signal Maintainer Berneking and the Carrier called and used Signal Maintainer C. K. Bevan with assigned headquarters at 61st Street to perform the necessary work to correct the trouble. Signal Maintainer Bevan worked on Signal Maintainer Berneking's regular assigned territory from 9:00 P. M. until 1:00 A. M., a total of four hours.

Again on December 28, 1957, trouble occurred on Signal Maintainer Berneking's assigned signal maintenance territory and the Carrier called and used Signal Maintainer R. E. Fowler with assigned headquarters at Root Street to perform the necessary work to correct the trouble. Signal Maintainer Fowler worked on Signal Maintainer Berneking's regular assigned territory from

three (3) hours, they will notify the person designated by the management that they will be absent, about when they will return, and, when possible, where they may be found. Unless registered absent, the regular assignee will be called."

Our records indicate that the above-quoted rule was complied with by the Carrier in every respect. Attempts were made by the transportation clerk to call claimant Berneking on both of those dates, to make repairs on his territory, without success as is evidenced by the attached letter declining the claims. (Carrier's Exhibit "A").

Inasmuch as Berneking failed to furnish the Carrier a telephone number or an address where he could be reached, he was not available to perform the emergency work, it was necessary to call the signal maintainer from the 61st Street territory on December 19, 1957 and the second trick signal maintainer from the Root Street territory on December 28, 1957, to promptly clear up the trouble in the emergency on those dates. Therefore, it cannot be said that the Carrier was in violation of Rule 19. Inasmuch as the claimant was not available for call on December 19 and 28, 1957 under the provisions of Rule 19, we have declined the claim and request your Board to uphold the Carrier's position.

Without relinquishing our position as above, we submit, in the event your Board rules otherwise, that as the claimant performed no work, the penalty, if any assessed, cannot exceed 4 hours at pro-rata rate on December 19, 1957 and 2 hours and 40 minutes at pro-rata rate on December 28, 1957. This principle has been upheld many times by this Division of the Adjustment Board. See also Award 1530 of the Second Division.

It is hereby affirmed that all of the foregoing is, in substance, known to the organization's representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential facts are that on dates of claim, emergency signal trouble developed on Claimant's territory, where he was regularly assigned as a Signal Maintainer. Signal Maintainers from adjacent seniority territories were used to perform the emergency service involved. Claimant was not registered absent at the times these emergencies arose.

Rule 19 of the effective Agreement applies to these facts. It reads as follows:

"Signal maintainers recognize the possibility of emergencies in the operation of the railroad, and will notify the person designated by the management of their regular point of call. When such employees desire to leave such point of call for a period of time in excess of three (3) hours, they will notify the person designated by the management that they will be absent, about when they will return, and, when possible, where they may be found. Unless registered absent, the regular assignee will be called."

The foregoing rule is mandatory in two pertinent respects: First, it requires the employee to notify someone designated by management where he may be called; second, it requires the Carrier to call the "regular assignee" for emergency service unless he has registered absent. As was so aptly said

in our Award 3292, "Under the rule the duty to make the call rests on the Carrier, the duty to respond rests on the employe."

The primary issue presented here is whether the Carrier made a reasonable effort to call the Claimant for the service. (Awards 9747, 10376, 10771).

Despite the bare assertion that Carrier attempted to call the Claimant by telephone on claim dates, the evidence of record on this key fact is, to say the least, confusing. In the face of the assertion that such attempts were made, the Carrier also alleges that Claimant violated the rule because of his failure to give the management either his telephone number or his address. It is difficult to understand how the Carrier attempted to telephone Claimant when by its own assertion it did not have his number or home address. Moreover, Claimant's address must have been known to the Carrier, because in denying his claim on the property, his immediate supervisor said, among other things, "The phone you listed is an office phone in your Trailer Park and not available for your use." Thus it appears that Claimant's "regular point of call" under Rule 19 was, in fact, known to the Carrier's representative on the property when the emergency situations developed. (Emphasis ours.)

The Board is of the opinion, under the facts of record here, that the evidence does not lend credibility to Carrier's contention that attempts to reach Claimant on claim dates were, in fact, made.

It is immaterial here that Claimant's point of call—the office phone in his Trailer Park—was not one that could be "depended upon" (Supervisor's denial letter dated December 27, 1957). What must be shown is that Carrier on claim dates made a reasonable effort to call him by telephone or some other means. That showing is not made on the facts in this case.

The secondary issue is whether Claimant is entitled to compensation at the overtime rate. We concur in those holdings of many years standing which state that the proper penalty rate for work lost because it was given to one not entitled to it under the Agreement, is the rate which the one rightfully entitled thereto would have been paid had he performed the work, (Awards 3193, 3271, 3277); or, put another way, the proper rate to be paid is the contract rate, (Awards 3381, 4022, 5784, 9309). Claimant here is entitled to the overtime rate under Rule 18 of the Agreement because that is what he would have been paid, if used, on his rest day, December 28, 1957, and on December 19, 1957, when the service would have been performed outside Claimant's regularly assigned hours.

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 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1963.