

Award No. 11487

Docket No. SG-11146

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, particularly Rule 18(a), when it did not call Signal Helper Virgil Bellomy, with assigned headquarters at Dent, Kentucky, for service on his regular assigned territory on December 15, 1957.

(b) The Carrier now compensate Signal Helper Virgil Bellomy for a minimum call of two hours and forty minutes at the time and one-half rate for the monetary loss sustained as a result of the above violation. [Carrier's file No. G-304-3, G-304, G-357]

EMPLOYEES' STATEMENT OF FACTS: Mr. Virgil Bellomy is regularly assigned to the Signal Helper position with headquarters at Dent, Ky. Mr. Bellomy is assigned to work with Signal Maintainer M. M. Kelley on the Dent, Ky., signal maintenance territory.

On the night of December 15, 1957, Signal Maintainer Kelley was called account signal trouble on his assigned signal maintenance territory. Signal Maintainer Kelley responded and answered the call by himself and did not call his regular assigned Signal Helper, Mr. Bellomy. Mr. Kelley answered the call about 1:00 A. M. and, upon investigating the cause of the signal failure, found a broken rail. Mr. Kelley called the section forces to repair the broken rail and loaded his signal tools on the section motor car and rode with the section forces to the scene of the broken rail and bonded the rail with signal bond wires after the section forces replaced the rail. After the rail was replaced and Mr. Kelley had restored the signal circuits to proper operation, he again loaded his signal tools on the section forces motor car and returned to his headquarters with the section forces.

Inasmuch as Mr. Kelley did not call and use his regularly assigned Signal Helper, Mr. Bellomy, for the overtime work on December 15, 1957, a claim was filed in Mr. Bellomy's behalf by Local Chairman E. E. Gaines with Mr. J. F. Wiseman, Signal Supervisor, under date of January 15, 1958, as follows:

ferred to letter of understanding to permit signal maintainers to decide whether they needed their helpers' assistance when called outside their regular working hours.

In the instant case, as evidenced by Maintainer Kelley's letter of February 14, 1958, *supra*, he did not consider he needed assistance when called out on the date here involved.

Carrier submits, in view of the circumstances involved, the January 3, 1949 letter of understanding and the subsequent practice, there is no basis for the employees' claim and same should be denied.

All matters referred to herein have been presented, in substance, by the carrier to representatives of the employees either in conference or correspondence.

OPINION OF BOARD: Claimant, Signal Helper Virgil Bellomy, is assigned to work with Signal Maintainer Kelley on the Dent, Kentucky, signal maintainer territory. The facts are not in dispute. Kelley when investigating the cause of a signal failure found a broken rail. He called the section forces to repair the broken rail and loaded his signal tools on the section motor car and rode with the section forces to the scene of the broken rail where he bonded the rail with signal bond wires after the section forces replaced the rail.

It is the contention of the Claimant that when the section men hauled the Signal Maintainer and his tools, the section men were taking the place of the Signal Helper who was not marked off call and under Rule 18(a) should have been called to work on this assigned territory.

Rule 18(a) provides, as follows:

"(a) Employees assigned to or filling maintenance positions will notify the management where they may ordinarily be called. If on specific occasions they desire to be off call, they will so advise the person designated for the purpose. Unless registered off call, they will be considered as available and will be called for service to be performed on their assigned territory and will respond as promptly as possible when called."

Carrier concedes that the facts are as herein stated but contends that under the provisions of a Supplement to the Agreement, dated January 3, 1949, there was no obligation under these circumstances to call the Signal Helper. The Letter of Understanding, or so much of it as is pertinent to this cause, is, as follows:

"Taken from letter of
understanding dated
January 3, 1949.

"It is agreed that signal maintainers when called outside regular working hours to clear signal trouble or do other emergency work will use their regularly assigned helpers or assistants in the event that their help is needed. (Emphasis ours.)

* * *

"... It will be left to the maintainer as to whether he needs assistance. (Emphasis ours.)

"FOR THE EMPLOYEES:

/s/ Tom McCamy
General Chairman,
Brotherhood of Railroad
Signalmen of America.

"FOR THE L&N RAILROAD COMPANY:

/s/ W. S. Scholl
Director of Personnel."

The following letter was addressed to the Signal Supervisor by Maintainer Kelley:

"Dent, Ky., Feb. 14, 1958

"Mr. J. F. Wiseman, S.S.
Ravenna, Ky.

"(Used my private auto from Dent to Hazard)

"Dear Sir:

* * *

"While walking the track circuit and testing, found a broken rail just north of dwarf signal at B. G. Tower. Called Dispatcher and Yardmaster, advising them both not to let any train in or out of this track. Asked Yardmaster to call out Section Foreman and me, stating to him if he did not have a rail handy, he could put on a pair splices by drilling. I returned to my tool house, awaiting the section foreman and men to find out if he would put in a rail or put on a pair splices. I took my hand drill and rode up with the section men and drilled the 2 holes myself. As I saw it, I did not need a helper, as if so, I would have had the work completed before he could have gotten there. (Emphasis ours.)

"M. M. Kelley, S.M."

There is nothing in Rule 18(a) which requires that a helper be called every-time his maintainer is called for signal work, as is explained in the Supplement to the Agreement. Though the "letter of understanding" does not give any Signal Maintainer the right to use any employes other than his regularly assigned Helper, or those coming within the Signalmen's Agreement, to assist in case of trouble it does leave to the discretion of the Maintainer the right to determine whether or not he needs assistance.

The Maintainer riding a short distance on the section men's motor car for convenience, instead of using his own car or the company truck, obviously does not evidence the existence of "work" or "service" which the helper stood to be called for as Claimant alleges. There was no Signalmen's work performed by employes not covered by their Agreement and, according to the Maintainer's

letter he did not call or request that Claimant be called as he did not consider he needed a helper.

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 Employees involved in this dispute are respectively Carrier and Employees 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June 1963.