

Award No. 11558

Docket No. SG-11100

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, 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 on the Chicago, Rock Island and Pacific Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, particularly Rule 19, when it called and used another Signal Maintainer on the second trick Root Street signal maintenance position on January 9, 1958, in place of the regular assignee, Signal Maintainer R. E. Fowler.

(b) The Carrier now pay Signal Maintainer R. E. Fowler for three hours at his overtime rate of pay for the violation cited in part (a). [Carrier's file No. L-130-121]

EMPLOYEES' STATEMENT OF FACTS: Mr. R. E. Fowler is regularly assigned as Signal Maintainer with headquarters at Root Street, Chicago, Illinois. Mr. Fowler was assigned to this position on Assignment Bulletin No. 22, dated December 5, 1957. The assigned hours of this position are from 4:00 P.M. to 12:00 P.M., and the regular rest days are Wednesday and Thursday.

On January 9, 1958, signal trouble developed on the territory assigned to Signal Maintainer Fowler and the Carrier called and used another Signal Maintainer from the adjoining 61st Street territory to perform the work instead of calling the regular assignee, Signal Maintainer Fowler.

Inasmuch as Signal Maintainer Fowler was not called to perform the work on his assigned signal maintenance territory, which work properly accrued to him by virtue of his assignment on Bulletin No. 22, he submitted a time slip (Form G87) for three hours at his punitive rate of pay, to Signal Supervisor G. R. Swanson. The overtime was not allowed and the claim was denied by Signal Supervisor Swanson in a letter to Mr. Fowler dated January 14, 1958.

The claim was subsequently turned over to General Chairman R. A. Watkins for further handling on the property.

Under date of March 6, 1958, General Chairman Watkins wrote the fol-

transportation clerk then called the next man in line which was Mr. Bevens.

I feel that Mr. Fowler is in error for not complying with the instructions as issued by the Signal Supervisor's office.

/s/ John A. McIntyre"

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 3 hours at pro-rata rate on January 9, 1958. 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: Claimant was the regularly assigned Signal Maintainer with headquarters at Root Street, Chicago, Illinois. On January 9, 1958 signal trouble developed in the territory assigned to Claimant, on one of Claimant's assigned rest days. Carrier called and used a Signal Maintainer from the adjoining 61st Street territory. Claimant contends that he should have been called and asks that he be compensated for three hours at his overtime rate of pay.

On March 11, 1958 Carrier's Signal Supervisor wrote to Petitioner's General Chairman that he agrees that Claimant "was the assignee on this position" but that the claim is without merit because Claimant did not fully comply with Rule 19 of the Agreement. This letter continued as follows:

"You stated in your letter that 'Rule 19 is very plain and unambiguous,' but for a rule to remain unambiguous it must be understood in its entirety and not just in part. This rule states also that the person designated by the management must be notified as to the maintainer's point of call.

Mr. Fowler failed to notify either myself or Mr. Swanson of his address and/or his phone number and inasmuch as Mr. Fowler did not comply with his own agreement, I must continue to deny the claim."

The General Chairman replied under date of March 15, 1958 that Signal Testman McIntyre had previously called Claimant on an emergency during a snow storm. This letter continued to read as follows:

"On July 14, 1954, File: AR-19 I asked Mr. C. Bishop, then Signal Engineer, 'who the person is that is designated by the management of their regular point of call in excess of three (3) hours.' Conference was held on July 29, 1954, with Mr. H. P. Schmidt, then Assistant Signal Engineer, and he agreed to have Superintendent furnish and to date I have not been advised any further.

"In the last paragraph of your letter you say Mr. Fowler failed to notify either Mr. Swanson or yourself of his address. This is in error; as I understand it, arrangements were made with your office for Mr. McIntyre to be notified and he in turn agreed to call Fowler

in the event he was needed, and previous to this claim as I have stated above, you used this method and regardless of this you are obligated to notify the men who they are to notify in the event they desired to be absent. In this case Fowler was not absent and is entitled to the pay, and I respectfully request that you reconsider your action and authorize payment as claimed advising me."

The record contains a written statement from Signal Testman, John A. McIntyre, dated July 2, 1958 which reads as follows:

"Mr. J. B. Buffalo:

In connection with the claim of R. E. Fowler, Root Street because not being available on January 9, 1958 for emergency work on his territory.

Signal Maintainer, Mr. Fowler had instructions to contact the transportation clerk's office at Blue Island which is open 24 hours a day and to leave my telephone number with the transportation clerk which he failed to do so.

Having no knowledge of where Mr. Fowler could be located, the transportation clerk then called the next man in line which was Mr. Bevans.

I feel that Mr. Fowler is in error for not complying with the instructions as issued by the Signal Supervisor's office."

Claimant countered with an affidavit dated September 20, 1958 which reads as follows:

"To Whom It May Concern:

When I first went to work at Root Street on, or about May 14, 1957 Mr. J. A. McIntyre the Signal Testman told me it would not be necessary for me to get a telephone installed, as I would probably only be there a short time and that he would tell Mr. G. R. Swanson, the Signal Supervisor if I was needed to call him and he would come and notify me, as he only lived 4 blocks from where I lived.

He did do this on two or three occasions while I worked Root Street job, one time during a snow storm to go to Root Street and 45th Street; and on one occasion that I remember went to 45th Street when lightning struck the tower."

Rule 19 of the Agreement provides as follows:

"Rule 19. Subject To Call: 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 record conclusively shows that Claimant was the "regular as-

signee" who was entitled to be called. Carrier says that Claimant was not called because he failed to "notify the person designated by management of" his "regular point of call." Carrier's position has no foundation in fact.

First, Carrier never denied Petitioner's statement in the letter of March 15, 1958, that the General Chairman asked the Signal Engineer on July 14, 1954 to designate the person to whom point of call and absence may be made and that as of that date (March 15, 1958) no advice had been received.

Secondly, Mr. McIntyre's statement of July 2, 1958 does not say that he advised Claimant to leave his telephone number and address with the transportation clerk at Blue Island. He says only that Claimant "had instructions to contact the transportation clerk's office at Blue Island." Who gave Claimant such instructions? It cannot be inferred that Mr. McIntyre did so. If it was someone else there is no evidence from such a person.

Thirdly, there is no denial in the record that Claimant had previously been called for emergency work. The record is also clear that Claimant had no telephone. A point of call under Rule 19 does not apply exclusively to a telephone. It may be the employee's home address. McIntyre lived near Claimant and knew that Claimant had no telephone.

Claimant's affidavit dated September 20, 1958 is nowhere refuted. There is every reason to believe that Mr. McIntyre made the representations therein contained because Claimant had previously been called for emergency work.

A comparable issue between the same parties and the same Rule 19 was involved in Award 11333 (Coburn). We said in that Award:

"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 facts in this case do not show that Carrier made a reasonable showing to reach Claimant on the date of the claim and call him for the emergency work.

There is no merit to Carrier's contention that because Claimant performed no work on January 9, 1958, that the penalty cannot exceed three hours at pro-rata rate. Claimant is entitled to pay at his time and one-half rate because that is the amount he would have received had he worked on that day. Awards 11333 (Coburn), 3191 and 3277 (Carter), 3371 (Tipton), 3744 (Wenke), 3876 (Yeager), 4257 (Shake), 4467 (Robertson), 4571 (Whiting), 4962 (Parker), 5263 (Boyd), 9436 (Begley), 9644 (Crowther), 10009 (McMahon), 10633 (Levinson), and 11080 (Ray).

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 is sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1963.