Award No. 11743
Docket No. SG-11248

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, 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, as amended, especially Rule 18(a), when, at 5:00 A. M. on March 15, 1958, it called an adjoining Signal Maintainer to clear signal trouble on the Dent, Kentucky, signal maintenance territory instead of calling Virgil Bellomy, who was a regular assignee on that territory and who was not registered absent.

(b) The Carrier now compensate Virgil Bellomy for two hours and forty minutes at the Signal Maintainer's overtime rate of pay. [Carrier's File: G-357-3, G-357]

EMPLOYES' STATEMENT OF FACTS: On March 14, 1958, Mr. M. M. Kelley was the assigned Signal Maintainer on the Dent, Ky., signal maintenance territory, and Mr. Virgil Bellomy was the assigned Signal Helper on the same territory. On that date, Mr. Kelley notified the Carrier that he would not be available for call from 6:15 P. M. March 14 until 6:00 P. M. March 16. About 7:00 P. M. on that date, signal trouble developed at south switch at Dent and about 5:00 A. M. March 15, 1958, the Carrier called an adjoining Signal Maintainer to investigate that trouble. As Mr. Bellomy was subject to call according to Rule 18(a) of the Signalmen's Agreement and was not registered absent on March 14 or 15, 1958, **Mr. Edwin E. Gaines, Local Chairman,** presented the following claim to **Mr. J. F. Wiseman, Signal Supervisor,** on **May 12, 1958:**

"On March 15th, 1958 about 5:00 A. M., Mr. Paul Pennington, Signal Maintainer at Krypton, Ky., was called to the Dent, Ky., territory which is maintained by M. M. Kelley and Virgil Bellomy to clear a case of trouble. He renewed a fuse in a power switch at the south end of Dent, Ky.

Mr. Virgil Bellomy has a letter addressed to H. E. Wilson, Chief Dispatcher, instructing him to call Bellomy when Mr. Kelley was marked off call.

In the circumstances, we see no basis for the claim and same is respectfully declined.

Yours truly,

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

The agreement involved became effective February 16, 1949, and has been revised to October 1, 1950. Copies of the agreement are on file with the Third Division.

POSITION OF CARRIER: Rule 18(a), of the current agreement, reads as follows:

> "Employes 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."

It was understood by all concerned that when necessary to call Claimant Bellomy, the section foreman at Blackey would be called and he in turn would call Bellomy.

On the date involved four attempts were made by the dispatcher to call Bellomy in the usual manner, but without success.

Carrier submits a reasonable effort was made to call Bellomy in view of which there is no basis for the instant claim and same should, therefore, be denied.

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

OPINION OF BOARD: Mr. Virgil Bellomy's claim for wages arises from a situation in which he did not substitute for the regularly assigned maintainer, Mr. Kelly.

Claimant maintains that Carrier violated Rule 18 (a) of the agreement when it employed an adjoining signalman to clear the trouble rather than Claimant, the assigned signal helper for the territory. Rule 18 (a) reads as follows:

> "Employes 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."

Claimant argues that under this rule Carrier, having accepted the arrangement whereby Claimant was to be called for work and that arrangement having proved unsuccessful in reaching employe, the burden remained with Carrier to find other means to notify Claimant that his services were needed. Carrier, however, maintains that it complied with its obligation under the agreement when it made as many as four attempts to reach Claimant before calling upon another worker outside of the territory. This party, moreover, emphasizes that the method it applied for reaching Claimant Bellomy through the Section Foreman at Blakely was in accordance with the prior understood and established arrangement in keeping with Rule 18 (a).

The issue to be determined is whether the performance of Carrier in attempting to notify Claimant was fulfillment of its obligation under Rule 18 (a). In accordance with the provision of Rule 18 (a), "Employes assigned to or filling maintenance positions will notify the management where they may ordinarily be called," we find that the parties of the dispute had determined by prior practice a plan for Carrier to call the Section Foreman at Blakely, who, in turn, would notify Mr. Bellomy to report for work. The employe apparently was satisfied with the arrangement, for we note he made no request for a new notification plan. The four attempts of Carrier to reach Claimant were in accordance with the plan well understood and acquiesced in by Mr. Bellomy.

We do not accept Claimant's interpretation that Rule 18 (a) carries with it an obligation and burden on the part of Carrier to reach the employe if the established arrangement proves inadequate. We have carefully considered Award 3292 cited by Claimant to support his contention. We agree with the principle as applied to the particular facts in that case, but we do not find it applicable to this dispute. In the cited case no call was attempted because of a mechanical breakdown in the telephone service; nothing further was done by Carrier. Under such circumstances we concur that the mechanical failure did not excuse Carrier from carrying out its duty to make the call for which it contracted. We see no similar reason for Carrier to institute a method for reaching Mr. Bellomy. Here, there was no mechanical failure, and Carrier did make the call for which it contracted; in fact, it made four calls in an attempt to notify him to report to work. To place this burden upon Carrier would mean that it would have to continue to pursue other means until it was successful in reaching employe or it would have to be regarded as having violated the agreement. The rule does not undertake to make that statement. Furthermore, for us to draw that interpretation would be to place an unrealistic burden on one of the parties. We believe, however, that the rule imposes an obligation on Carrier to make a reasonable effort to communicate with employe under a plan known and acceptable to the parties. We find Carrier's efforts in this case were reasonable and were in accordance with the agreement. The claim, therefore, is denied.

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 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 26th day of September 1963.

DISSENT TO AWARD 11743, DOCKET SG-11248

This Award is in error in that it shifts to the employe the responsibility of providing some infallible means of being called in order to be entitled to calls. Such requirement cannot be gotten from Rule 18. The rule clearly provides that—"unless registered off call, they will be considered as available and **will be called.**" (Emphasis ours.) Conversely, the rule does not say that—"unless registered off call, they will be considered as available and **an attempt will be made to call them.**", yet that is exactly the construction the Majority has erroneously placed upon the rule in this case. Claimant was not registered off call.

In the course of dealing with the plan by which Claimant is usually called the majority says:

> "* * * The employe apparently was satisfied with the arrangement, for we note he made no request for a new notification plan. The four attempts of Carrier to reach Claimant were in accordance with the plan well understood and acquiesced in by Mr. Bellomy."

which is beside the point. Under Rule 18, Claimant was required to notify Management **where** he may ordinarily be called. He had done that. There is nothing in the rule that requires him to notify Management how he may ordinarily be called. That is the Carrier's responsibility as was so clearly pointed out in Award 3292.

Further error was committed by the Majority when they for some undisclosed reason elected to misstate the facts in connection with the dispute covered by Award 3292. Failure to call Claimant in that case was not due to a mechanical breakdown in the telephone service as alleged by the Majority but because Claimant did not have a telephone in his residence and Carrier had failed to provide means for calling him. In the case at hand Carrier relied upon an arrangement whereby an employe of another department was to be called and he in turn would call Claimant. Carrier's failure to provide a more reliable means of reaching Claimant when needed is not properly chargeable to Claimant as the Majority has done.

Equally erroneous is the Majority's holding that to require the Carrier to actually reach the employe would place an unrealistic burden on one of the parties. What about the other party, viz., the Claimant? After all, he had complied with his end of the bargain and was standing by without pay ready to serve the Carrier if needed. The Majority's finding that Claimant is not entitled to be paid for the call is what is unrealistic, also absurd.

In Award 11743 the Majority, composed of the Referee and the Carrier Members, has written an exception to Rule 18 for the benefit of the Carrier, something they are not empowered to do; therefore, I dissent.

G. Orndorff
Labor Member