

Award No. 11888
Docket No. SG-11420

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE VIRGINIAN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on The Virginian Railway Company, that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when it required and/or permitted two Maintenance of Way employees to assist a Signal Maintainer in replacing a broken gate on a highway crossing protection device at Granby Street on September 27, 1958, instead of calling and using an available signal employee.

(b) The Carrier should now be required to compensate Signal Maintainer A. D. Bohon for ten hours at the Signalmen's overtime rate of pay for September 27, 1958.
[Carrier's File: M-1100-33]

EMPLOYEES' STATEMENT OF FACTS: On September 27, 1958, a wind storm broke a 27 foot gate arm on a highway crossing protection signal at Granby Street on Signal Maintainer A. L. Ratliff's signal maintenance territory. Mr. Ratliff was called about 8:40 P. M., September 27, 1958, and about 9:30 P. M., on that date he called section forces who assisted him in replacing the gate arm, which included attaching the arm to the gate mechanism, installing neon tubes, neon supports and wires for a complete new gate arm. Repairs were completed about 1:10 A. M., September 28, 1958. The section forces were released about 1:30 A. M., and Mr. Ratliff about 1:40 A. M., September 28, 1958.

Mr. Ratliff's territory is adjacent to the territory of Signal Maintainer A. D. Bohon, the claimant in this dispute. Granby Street is about 5.2 miles from Mr. Ratliff's headquarters (Tidewater Junction) and about 7.4 miles from Mr. Bohon's headquarters (Carolina Junction).

Mr. Ratliff did not call Mr. Bohon on September 27, 1958, nor make any attempt to do so, as he had been instructed by Mr. N. S. Lewis,

OPINION OF BOARD: One-half of the claim must be denied on the basis that had Claimant been called, he could not have worked the two positions for which claim is made, either simultaneously or consecutively. Accordingly, without deciding whether the flagman duty was exclusively Signalmen's work, we find and decide that Claimant is not entitled to pay for such flagman duty.

The remaining issue is whether Carrier violated the Agreement by requiring or permitting a Maintenance of Way Section Foreman to assist a Signal Maintainer in replacing a gate arm on a protection signal on a main traffic artery in Norfolk, Virginia. Such work is specifically and exclusively reserved to Signalmen by the Agreement. Rule 101.

Carrier's remaining defense is based on emergency. Employees affirmatively stated in their ex parte submission:

"Mr. Ratliff did not call Mr. Bohon on September 27, 1958, nor make any attempt to do so, as he had been instructed by Mr. N. S. Lewis, Superintendent Telegraph and Signals, not to call Mr. Bohon for any trouble on either territory.

"As Mr. Bohon was available on September 27, 1958, . . ."

Carrier's response in its rebuttal submission was:

"It is the Carrier's understanding that Signal Maintainer Ratliff did try to get in touch with Claimant Bohon through the T&T Maintainer, but was unable to do so."

Carrier offered no probative evidence to support the assertion.

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Employees' prima facie case cast upon Carrier the duty of coming forth with evidence that it had made reasonable, bona fide efforts to call an Employee covered by the Signalmen's Agreement, and that such efforts were unsuccessful; or, in the alternative, that the emergency was of such nature as to excuse its failure to call a Signalman as required by the Contract. In this instance, Carrier did neither.

The Claimant is entitled to pay for five hours at the Signalmen's overtime rate of pay for September 27, 1958.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 violated.

AWARD

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.

CONCURRENCE TO AWARD 11888, DOCKET SG-11420

Award 11888 correctly interprets the applicable agreement insofar as it sustains the Petitioner's position. There is, however, an error in the Award.

Without deciding whether the duty of providing flag protection under the circumstances of the case is reserved to Signalmen, the Award states:

"One-half of the claim must be denied on the basis that had Claimant been called, he could not have worked the two positions for which claim is made, either simultaneously or consecutively."

This Board has long recognized that claims of this nature are made primarily because of a violation of the agreement and that the designation of a claimant is incidental. (See Awards 1646, 2282, 3371, 3375, 3376, 3890, 4103, 4370, 4544, 4550, 4552, 4571, 4962, 5266, 5419, 5425, 6019, 6158 and 6284). The Board should have dealt with the whole claim, and failing to do so, is in error.

LABOR MEMBER
W. W. Altus