

Award No. 13020
Docket No. SG-11924

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the St. Louis-San Francisco Railway Company that:

(a) The Carrier violated the Scope, Classification, and other provisions of the Signalmen's Agreement on October 18, 1958, when the Dispatcher called E. H. Mummey, Signal Test Foreman, Jasper, Alabama, to clear signal trouble at Thomas Junction.

(b) E. H. Mummey be compensated 6 hours at the Maintainer's overtime rate of pay which represents the number of hours spent clearing the trouble.

(c) J. C. Reese, Signal Maintainer at Winfield, Alabama, be compensated 6 hours at his respective overtime rate of pay which represents the number of hours used by the Signal Test Foreman clearing the trouble.
[Carrier's File: D-3480]

EMPLOYES' STATEMENT OF FACTS: Mr. E. H. Mummey is regularly assigned to a position of Signal Test Foreman with assigned headquarters at Jasper, Ala. The position of Signal Test Foreman held by Mr. Mummey is classified under Rule 2 of the current Signalmen's Agreement and is compensated in accordance with the provisions of Rule 61 of the current Signalmen's Agreement.

On Saturday, October 18, 1958, Signal Test Foreman Mummey was called from his home at Jasper, Ala., at 2:45 P. M. to clear signal trouble at Thomas Jct.

Signal Test Foreman Mummey cleared the signal trouble at Thomas Jct., which was caused by a damaged point detector bar on switch machine No. 7, completing the work at 8:45 P. M. Signal Test Foreman Mummey turned in an overtime slip for performing the above signal maintenance work which was not a part of his regular assigned duties, but the Carrier refused to allow the amount of time claimed.

Under date of November 30, 1958, General Chairman J. T. Cunningham presented the following claim to Mr. P. W. Davis, Signal Supervisor:

these circumstances he was properly utilized to clear the trouble at Thomas Junction.

As hereinbefore stated, the headquarters point of Claimant Reese was at Winfield, Alabama, which is a distance of 76 miles from Thomas Junction. The Signal Test Foreman utilized was stationed only 37 miles from the point of trouble. In handling the dispute on the property, the Organization took the position that the Signal Test Foreman was used out of his classification and that a Signal Maintainer should have been used to perform the work. In these circumstances, however, the Rules of the Agreement do not support the Organization's position.

Rule 19 of the basic agreement provides that:

"RULE 19.

Employes assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and will notify the person designated by the Management where they may be called. When such employes desire to leave their home station or section, 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, regular assignee will be called.

The Signal Maintainer with headquarters at Pratt City was the only one of the four Signal Maintainers between Birmingham and Winfield that complied with Rule 19 on the date of the claim. The others could not be located when the emergency condition arose at Thomas Junction. Because of the serious delay that would have resulted to trains, it was necessary that the signal trouble at Thomas Junction be cleared immediately. It was neither practicable nor required by agreement rules that Claimant Reese perform the disputed work. Subsequent to the claim date, Claimant Reese retired from the service of the Carrier under the age provisions of the Railroad Retirement Act.

The agreement rules as they apply to the particular factual situation involved do not warrant a sustaining award and this Division is requested to so find.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim arises because of signal trouble which had developed at Thomas Junction on a Saturday. The Train Dispatcher on duty tried unsuccessfully to locate the regularly assigned Signal Maintainer, and then Signal Maintainers at other nearby points, Dora, Jasper, and Carbon Hill, to clear the trouble. The Signal Maintainers assigned to these territories could not be located. The Signal Maintainer assigned to the one other abutting territory—Pratt City, had reported that he would be unavailable on the date in question. A Signal Test Foreman located at Jasper, Alabama, thirty miles away was called to clear the trouble.

The Petitioner claims that the work done properly accrued to Signal Maintainer J. C. Reese with assigned headquarters at Winfield, Alabama, 76 miles from Thomas Junction. It seeks six hours' compensation for him at his overtime rate in lieu of work allegedly improperly denied him. It also claims six hours' compensation at Maintainers' overtime rate for Signal Test

Foreman E. H. Mummey, representing the time spent by him in clearing the trouble.

CLAIM FOR SIGNAL MAINTAINER REESE

Because of the serious delay that would have resulted to trains, it was necessary that the signal trouble be cleared by quickest means.

It is undisputed that the Train Dispatcher made a good faith effort without success, to contact Signal Maintainers at four different points in the area, all a great deal closer than the location of Claimant Reese. In the presence of the emergency, Train Dispatcher exercised permissible latitude in drafting the Signal Test Foreman who was less than half the distance and time away from the scene than was the Claimant. Awards 9968, 1018, 10965, 11241.

CLAIM FOR SIGNAL TEST FOREMAN MUMMEY

Test Foremen are monthly-paid employees under the Agreement. As such their compensation "covers all service performed during the calendar month" except for certain specific circumstances stated in Rule 61. Among these exceptions is the one stated in Rule 61 (2), viz:

"Such foreman shall be assigned one regular rest day per week, Sunday if possible. Rules applicable to hourly rated employees shall apply to service on such assigned rest day. Ordinary maintenance or construction work not heretofore required on Sunday will not be required on the sixth day of the work week."

The work which Foreman Mummey was here called upon to do, was performed on the sixth day of his workweek. This was not his day of rest. The overtime rate provision for service performed on rest days is therefore not applicable to this work.

A question remains as to whether he performed "ordinary maintenance or construction work not heretofore required on Sunday"—and if so, whether it would constitute a violation, and with what remedy.

The word "ordinary" is commonly employed to denote the customary and expected in one or both of two senses: procedure and occurrence. Absent any other enlargement or explanation in the Agreement, we must assume that the parties had both in mind.

In terms of procedure, there can be little question but that under conventional circumstances a Signal Maintainer would be entitled to do the work and would have done it.

The Carrier admitted as much when it stated (in its letter of December 23, 1958), "Ordinarily we would have called a Signal Maintainer had one been available. . . ."

But the episode was out of the ordinary within the circumstances in which it occurred. Quick attention to it was imperative; eligible Signal Maintainers could not be located within a reasonable distance.

When the historical context of the provision (i.e., as a safeguard accompanying the transition of hourly-rated employees to a five-day week) is

borne in mind, it is apparent that the purpose of the proviso was that the foreman should not be used as a substitute for those who had acquired an additional day of rest.

It cannot be said with reasonable accuracy that an attempt was made here to frustrate or evade the five-day week for Signal Maintainers under the special conditions here of a single assignment under emergency conditions after good faith efforts had failed to find a Signal Maintainer practicably available.

It has also not been persuasively established that an injury was inflicted on the Claimant, calling for or remediable by a cash award.

Two additional factors reinforce our findings:

1. The Classification Rule does not so limit the work content of a Test Foreman's job as to bar him entirely from doing the work here performed by the Claimant. Only the essential and characteristic duties are described and in general terms — ". . . regularly assigned to and whose principal duties . . ." We have no basis for assuming any bar, under these exceptional circumstances, against the kind of work done here.

2. The absence of any provision in the agreement for penalty rates or other monetary benefit when work is done other than those of the main body of Test Foreman's work.

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 Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1964.

DISSENT TO AWARD 13020, DOCKET SG-11924

I have no quarrel with either the disposition of the Claim as pertains to Claimant Reese or the Carrier's ultimate use of Claimant Mummey.

However, the Majority, consisting of the Referee and the Carrier Members, after admitting that the work involved was not incidental to the assignment held by Claimant Mummey, goes off on an excursion of double talk having no conceivable purpose other than to deny Mummey pay for getting the Carrier out of a spot.

This Award insofar as it pertains to Claimant Mummey is absurd and the additional reinforcing factors gratuitously thrown in by the Majority do not give the Award respectability.

G. Orndorff
Labor Member