

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John H. Dorsey, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**THE WESTERN PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Western Pacific Railroad Company:

On behalf of Signal Maintainer F. N. Dudley, Sand Pass, for a two hour and forty minute call on July 29, 1960, account trouble on his district and another Maintainer was called.

[Carrier's File: Case No. 6779-1960-BRS]

**EMPLOYES' STATEMENT OF FACTS:** On the date involved in this dispute, Claimant Dudley was a Signal Maintainer with headquarters at Sand Pass, Nevada.

On the afternoon of July 29, 1960, a severe rain and electrical storm occurred in the vicinity of Sand Pass. At approximately 2:00 P.M. on that date, Mr. Dudley telephoned the General Signal Maintainer and asked him to run some indication codes on his territory, advising that there had been a flash flood on his territory and since he was scheduled to begin his vacation on the following Monday, August 1, 1960, he wanted to determine if lightning had caused any signal trouble. The General Signal Maintainer checked with the Dispatcher, and Mr. Dudley was informed that everything was alright on the Sand Pass territory.

Following the flash flood on July 29, 1960, Section Forces were called to clear mud and debris from the track. During the course of the evening, Mr. Dudley telephoned the Dispatcher to check on the movement of Train No. 1 for the Section Foreman while the Foreman and his crew were eating, as it had been about five and one-half hours since they had eaten. Mr. Dudley talked to the Dispatcher before and after Train No. 1 passed Sand Pass.

After Train No. 1 passed Sand Pass, it reported signal trouble on the Sand Pass territory. At about 9:30 P.M. on July 29, 1960, the adjoining Signal Maintainer was sent by the Carrier to the Sand Pass territory to clear up the signal trouble that had been reported by Train No. 1. The Carrier made no attempt to call the claimant to clear this signal trouble on his assigned territory.

It will be noted by your Board the cause of the signal's malfunction was a "light out" as per the above quoted letter. This malfunction had no connection whatever with the flash floods allegedly reported in the Sand Pass area on July 29, 1960, although the General Chairman's letter of appeal dated October 25, 1960 (Carrier's Exhibit D) inferred that inasmuch as flash floods had been reported, and the section men had been called to clear the track, Claimant Dudley should have been called. Whether or not there had been flash floods in the Sand Pass area on July 29, 1960 and whether or not section men had been called because of flash floods is immaterial to this dispute.

The Organization has, in its letters of appeal on the property (Carrier's Exhibits A and D) quote pointedly made reference to Claimant Dudley's alleged contacting of the dispatcher the evening of July 29 because of flash floods in the Sand Pass area. Signal maintainers report to and receive their instructions from the Signal Supervisors. The train dispatchers do not supervise nor maintain records of the availability of signal maintainers on this property. No employe in a dispatchers' office has knowledge, nor is he required to have knowledge of which signal maintainer to call in case of signal failure or any other signal system trouble. The Signal Supervisor at Elko, either directly or through his office at Elko, is the supervisor who directs the activity of signal maintainers assigned to the Eastern Division, and is the person who, in the instant dispute, called a maintainer from Doyle, California in the reported absence of Claimant Dudley from his headquarters at Sand Pass, Nevada, such absence having been previously reported to the Signal Supervisor by claimant himself. It is to be noted that for the Carrier to have called a maintainer from Doyle, California (Mile Post 362.6) instead of from Sand Pass, Nevada (Mile Post 393.7) to service a signal at Mile Post 390.5 attests to an inefficiency brought about by Claimant Dudley's notifying the Signal Supervisor, through Mr. Rhines, that he was leaving on vacation.

General Chairman Hodges' letter of October 25, 1960 (Carrier's Exhibit D) in the fourth paragraph thereof, states in part: "It has always been the practice on the Western Pacific to call the maintainer on whose district trouble develops if they have not notified their superior that they will be away. . . ." (Emphasis ours.) As a practical matter this is true; the maintainer is more familiar with his own district and is usually the closest man to the trouble. On the other hand, in the instant dispute, claimant specifically notified his superior that he would be away yet the Organization continues to argue some super right of claimant that is not provided in the current Agreement.

The instant claim is not supported by any provision of the current Agreement and Carrier urges it be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** In the afternoon of July 29, 1960, a severe rain and electrical storm occurred in the District for which Claimant was Signal Maintainer. Claimant called the General Signal Maintainer, a non-supervisory employe, and asked him to run some indication codes on his territory and during the conversation told the General Signal Maintainer that he (Claimant) was scheduled to begin his vacation. The General Signal Maintainer checked with the Dispatcher and informed Claimant that everything was alright in his District; and, left a note for the Signal Supervisor that Claimant would be on his vacation—there is no evidence in the record as

to why the note was drafted. Thereafter, on the same day at about 9:00 P. M., signal trouble was reported by Train No. 1—a light out—in Claimant's District. The Supervisor assumed, from the note which he had received from the General Signal Maintainer, that Claimant was unavailable at that time and proceeded to give the call to a Signal Maintainer on a District adjacent to that of Claimant.

It is uncontradicted that Claimant was available at the time; and, the Carrier admits that "It has always been the practice . . . to call the maintainer on whose district trouble develops if they have not notified their superior that they will be away."

There is no evidence in this record that Claimant had notified his superior that he would be away at the time that the need for the call arose.

The date of the call was Friday, July 29. The following Saturday and Sunday, July 30 and 31, were Claimant's rest days. He was scheduled to begin his vacation on Monday, August 1.

When the Supervisor assumed that Claimant was not available and proceeded to give the call to another, he took the risk which would flow from the assumption not being supported by fact. Therefore, since Claimant was available; had not informed his supervisor that he would not be available; and, Carrier admits that if he was available, past practice dictated that he should have received the call, we will sustain the Claim.

**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 Carrier violated the Agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1965.