

Award No. 13820
Docket No. SG-13778

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Pennsylvania Railroad Company that:

(a) On May 29, 1961, the Carrier violated Article 1, Section 2 (a), of the current agreement when it assigned work between 9:00 P. M. and 1:00 A. M. to Leading Maintainer H. C. Resh without the assistance of a Signal Maintainer or a Signaller. Leading Maintainer H. C. Resh was notified at 9:00 P. M. that flashers at Leola were operating.

(b) Signal Maintainer C. J. Stofko, who was available at that time, he paid a total of four (4) hours at the overtime rate.

[Carrier's File: System Docket 288 — Philadelphia Region, Harrisburg Case 16528-A.]

EMPLOYEES' STATEMENT OF FACTS: This dispute arose as a result of the Carrier assigning a Leading Maintainer to perform Maintainer duties without the assistance of a Signaller or Signal Maintainer outside of regularly assigned hours. Under the effective Agreement, a Leading Maintainer and a Signal Maintainer are different classifications of employees.

The following is a brief resume of the events leading to this dispute:

At 7:57 P. M. on Monday, May 29, 1961, the flashers (road crossing signals) at New Port Road, Leola, were reported to be operating continuously. Subsequently, Maintainer Barrow, on whose section the trouble in question occurred, was called but no one answered his phone. Following this, Maintainers Book and Morris were called but no one answered their phones.

Then the Carrier, after one hour and three minutes, located Leading Maintainer H. C. Resh who responded to the call. Claimant C. J. Stofko, a Maintainer with headquarters at Columbia, Penna., was available but was not called. Claimant Stofko could have responded sooner than did Leading Maintainer Resh, as it took one hour and three minutes following the report to

In awards too numerous to require citation, your Honorable Board has consistently refused to allow punitive rate for time not worked. Therefore, if it should be decided, contrary to the evidence set forth above, that a sustaining award is here indicated, the Claimant would under no circumstances be entitled to more than four hours' pay at the straight time rate.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act in Section 3, First, Subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out "of grievances or out of the interpretations or application of Agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties thereto. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that no rule of the applicable Agreement supports the claim of the Employees and no violation of said Rules Agreement could possibly have occurred.

Therefore, your Honorable Board is respectfully requested to dismiss or deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: In a joint statement the parties agree on the following facts which gave rise to this claim:

Claimant C. J. Stofko held a Maintainer position with work days Monday through Friday and rest days Saturday and Sunday. On Monday, May 29, 1961, at 7:57 P. M. the flashers at New Port Road Leola, which is located just East of Lancaster, Pennsylvania, were reported not to be in operating condition. Maintainer Barrow, on whose section the trouble occurred, was called but could not be reached. Maintainers Book and Morris were successively called but they did not answer their phones. Carrier then reached Leading Maintainer H. C. Resh who responded to the call and worked four hours.

The claim made here is similar to the one presented in Award 13819 involving the same Agreement. For the reasons given in that Award, we also hold that this claim is without merit.

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 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

The Agreement was not violated.

AWARD

Claim is denied.

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

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 6th day of August 1965.

**DISSENT TO AWARD No. 13820,
DOCKET No. SG-13778**

The Majority cites Award No. 13819 as disposing of the issues in this case; therefore, for the reasons given in our dissent to Award No. 13819, we dissent in Award No. 13820.

**W. W. Altus
For Labor Members 8/25/65**

**CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S
DISSENT TO AWARD 13820, DOCKET SG-13778**

(Referee Engelstein)

For the reasons outlined in Carrier Members' answer to Labor Member's dissent to Award 13819, Docket SG-13767, we submit the decision reached in this case is sound and persuasive.

**W. F. Euker
R. A. DeRossett
C. H. Manoogian
G. L. Naylor
W. M. Roberts**