

Award No. 13821
Docket No. SG-14214

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

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) The Company violated Article 1, Sections 2(a) and 3; and Article 2, Section 23(h) of the current agreement, when, on August 28, 1961, at 4:30 P. M., it assigned Maintainer's work to Leading Maintainer H. C. Resh without the assistance of a Maintainer — also, it did not use the regularly assigned Maintainer. H. C. Resh was notified that the '90' light was out in Signal 26-L at Cork Interlocking.

(b) B. E. Britcher, Maintainer T&S, be paid 2.7 hours at the overtime rate of pay.

[System Docket No. 363 — Phila. Region (Hbg. Dist Case No. 16702).]

EMPLOYES' STATEMENT OF FACTS: This dispute arose as a result of the Carrier not calling the regularly assigned Signal Maintainer on August 28, 1961, for work which properly accrued to him. This work was performed on his territory during a part of that day which was not a part of any assignment. There were no unassigned employees who would not have forty hours of work that week.

A further point of contention was the fact that the Carrier chose to assign a Leading Maintainer to perform Signal Maintainer duties instead of using a Signal Maintainer or Signalmen. Under the effective Agreement, Signal Maintainers and Signalmen are in the same classification of employees, while Leading Maintainers are in a distinctly different class.

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

A lamp in 26L Signal at Cork Interlocking, Lancaster, Pennsylvania, was reported burned out at 4:15 P. M. The Carrier attempted to call Signal Maintainers I. C. Book and C. R. Barrow, who were not available. At 4:30 P. M. Carrier called Leading Maintainer H. C. Resh who responded and made the necessary repairs. The regularly assigned Signal Maintainer on the territory, whose tour of duty had terminated at 3:30 P. M., was not called.

- (3) The Agreement contains no provision which provides that the Claimant had a demand right to the work in dispute;
- (4) There is no past practice to support the Employees' claim;
- (5) Article 1, Section 2 (a), was not violated inasmuch as it is recognized therein that a Leading Maintainer basically is "a Maintainer" and it is not disputed that a Maintainer may work without assistance;
- (6) Article 2, Section 23 (h), is not applicable to this dispute and could not, therefore, have been violated;
- (7) The Employees have failed to assume the burden of proving their claim, which burden your Honorable Board consistently has held to be the responsibility of the party making the claim.

Finally, it will be noted that paragraph (b) of the Employees' claim seeks "2.7 hours at the overtime rate."

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 2.7 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 Agreement could possibly have occurred.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute grew out of the following situation, the facts regarding which both parties are in agreement.

Claimant B. E. Britcher was regularly assigned as a Maintainer daily except for Saturdays and Sundays, with headquarters at Cork Tower, Lancaster. After completing his tour of duty at 3:30 P. M. on August 28, 1961, a lamp was reported burned out on 26-L Signal at Cork Interlocking, Mr. Britcher's territory.

Carrier tried but failed to reach Signal Maintainers I. C. Book and C. H. Barrow. It then called Leading Maintainer H. C. Resh who responded and corrected the difficulty.

The facts in this dispute are similar to those present in Award 13819 except that Carrier made no attempt to call Claimant Britcher, the regularly assigned Maintainer on the territory. As in this Award, the claim involves the same Agreement and similar issues.

Unlike Award 13819 Article 2, Section 23 (h) is not applicable in this dispute because the work performed was required on a day which was part of a regular assignment. Moreover, Carrier did not call Claimant because it knew he was on a train returning from work and, therefore, was not available to repair the signal.

For reasons expressed in Award 13819 we hold that the Agreement was not violated and the claim 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 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

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 13821 DOCKET SG-14214

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. 13821.

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

**CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S DISSENT
TO AWARD 13821, DOCKET SG-14214**

(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**