Award No. 13832
Docket No. SG-13512

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

NEW YORK CENTRAL RAILROAD
(Southern District)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the New York Central Railroad Company (Lines West of Buffalo) that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 24, when it assigned Indiana Division signal employes to perform work on the Illinois Division, another seniority district, in connection with the installation of a hot box detector, beginning on or about August 22, 1960, and continuing until about September 21, 1960.

(b) The Carrier should now be required to compensate Leading Signal Mechanic J. R. Yates, Signal Mechanics Wayne Jones and H. R. Hibschman, Assistant Signal Mechanics A. L. Williams and R. E. Martin, for eight (8) hours each at their respective pro rata rates of pay (Leading Signal Mechanic $2.746, Signal Mechanics $2.662, Assistant Signal Mechanics $2.554, per hour) for each of the following dates: August 22, 23, 24, 25, 26, 29, 30, 31, September 1, 2, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20 and 21, 1960, plus 3¼ hours' time and one-half pay each for September 9, 1960.

EMPLOYES' STATEMENT OF FACTS: Beginning on or about August 22, 1960, and continuing until about September 21, 1960, an Indiana Division signal gang performed work on the Illinois Division in connection with the installation of a hot box detector. The Claimants, who hold seniority rights on the Illinois Division, submitted claim for time on Forms NYCS-MW 357 for the second payroll period in August, and the first and second payroll periods in September. The amounts and dates listed thereon are shown in paragraph (b) of our Statement of Claim. The reason they gave for claiming this time, as shown on the face of these time rolls, was:

"Time slip for work done on Illinois Division MP 13 up to and including sig 141 and 142 by Avon signal gangs Ind Division installing hot box detector."

2. CLAIM IS IMPROPER IN THAT IT HAS BEEN PROGRESSED FOR WORK, A MAJOR PORTION OF WHICH WAS NOT PEFORMED ON CLAIMANTS' SENIORITY DISTRICT.

Without waiver of its contention that the entire claim is without merit and should be denied on the basis of no proven wage loss and unavailable to perform the work claimed, Carrier would call attention to the inconsistency and unreasonableness of the claim as progressed.

Indiana Division signal forces started installation of the recorder device at the crest of the hump — Mile Post 11 — on August 22, 1960, proceeding west from that point with the stringing of cable to Mile Post 14, where connections were made with the field detection equipment, which had previously been installed by Illinois Division signal forces. The project was completed on September 9, 1960, with the expenditure of 865 Indiana Division signalman hours, only sixty hours of which were spent on the Illinois Division.

The claim progressed encompasses the period August 22 to September 21, inclusive, 1960. Five men working eight hours per day for 22 days, plus 3¼ hours' overtime on September 9, would total 883¼ hours. It is evident that time was claimed beyond the actual completion date of September 9 and, in addition, time was claimed on dates prior to the actual performance of installation on the Illinois Division by Indiana Division employes.

Obviously, therefore, claim covers the hours spent in the entire installation on both the Indiana and Illinois Divisions, a major portion of which was expended in the installation of the recording device at the hump and stringing of cable to Mile Post 13 — all Indiana Division work. The only work on the Illinois Division performed by Indiana Division signalmen was the stringing of cable from Mile Post 13 to Mile Post 14, which required approximately sixty hours — four hours of which was required to splice cable at a rate of $2.746 and the balance of fifty-six hours at a rate of $2.662 for stringing the cable and the work incidental thereto, such as cutting brush, etc.

Therefore, had Illinois Division signalmen been available to perform that portion of the installation located on their seniority district, they would have received not more than sixty hours of the total of 865 hours expended by Indiana Division signal forces on the entire installation — certainly not the 883¼ hours which has been claimed.

The Carrier has established, under the circumstances in the instant case, claimants are not entitled to the compensation which they claim.

CONCLUSION

By no logical reasoning can it be argued that employes would be proper claimants in a "deprivation of work" claim when they were engaged in other work on the same dates, during the same hours and paying the same rates, particularly when, in this case, only about 7 per cent of the work claimed was work which they could have performed had they been available.

Claim as here progressed is totally without merit and should be denied. Carrier respectfully requests that your Board so hold.

OPINION OF BOARD: Carrier assigned Indiana Division signal employes to perform work on the Illinois Division, another seniority district, in

connection with the installation of a hot box detector. The record indicates that this was not an inadvertent error nor was there any element of emergency involved. The reason for the assignment was stated in a letter sent by B. R. Hardwick, Signal Supervisor, to V. E. Knop, the Local Chairman, as follows:

> "The reason for not sending in a gang from the Illinois Division was that they had already started on AFE jobs and it was felt that the job was too small to move camp cars to that location and the distance was too great to travel by truck.
>
> We will, however, try to avoid any recurrence which might permit such claims."

There can be no doubt that Carrier violated the seniority rights of the Claimants. The work amounted to only sixty man hours, not 883¼ as claimed. Nevertheless, those 60 hours were performed by Indiana seniority employes on the Illinois seniority district.

Carrier defends on the grounds that Claimants suffered no loss in earnings and were not available to perform the disputed work. In our opinion, neither defense is valid.

The argument that Claimants suffered no loss of earnings is based upon certain premises which deserve to be re-examined. It is assumed that if an employe works a full week he cannot have suffered any loss. This is based upon the idea that Carrier has promised the employe only that he will get a full week's work, that he has no right to overtime work. Carrier is quite correct in making these arguments. No employe has the right to demand more than the normal week's work nor may he demand overtime work. If the Carrier decides that no work shall be done after hours such a decision is properly within the Carrier's competence.

Once Carrier has decided that certain work should be done, however, the employes have rights which come into play and cannot be ignored. Among these rights is the right to be preferred over other employes for work to be performed in the district. If this right is ignored, the senior employes suffer a monetary loss. They have been deprived of the earnings which would have accrued from that work.

It is no answer to say that the employes have suffered no monetary loss because they earned a full week's wages. The fact is that employes are required on occasion to work overtime, and do work overtime for which they are paid extra compensation, beyond their full week's wages. When a situation arises from which they could expect overtime work by the operation of the Agreement and they are not so used but others are, others who may have no right to such work, the employes suffer damage, the loss of the extra compensation. In this case the Claimants suffered such a loss.

Carrier, not the employes, made the decision that the work, of which Claimants were deprived, should be done that week. In making that decision, Carrier also decided that more than the normal week's work should be done in the district. If Carrier had been compelled to use the senior employes in the district to do all the work that the Carrier determined should be done that week, these employes would have had to work overtime to accomplish it, but it would have been because Carrier decided that the work had to be done, not they.

That they were not so used means that they did not earn what they should have if the Agreement were adhered to by the Carrier. This constitutes a monetary loss for which the employes should be compensated.

Carrier's second defense, that Claimants were not available, is equally invalid. The fact is that Claimants were working where Carrier had assigned them, hence were not only available but Carrier was then availing itself of them. If they were not available at the time and place where the extra work was to be done, it was because Carrier chose not to assign them there.

It should be noted that the Award herein is for compensatory damages and is not a case in which Carrier is being "penalized" for a Rule infraction. The many awards cited by Carrier which hold that this Board has no authority to assess a penalty to enforce an agreement, are therefore not relevant.

It should also be noted that the Claimants here constituted the gang which would have performed the work if the Agreement had been followed and that the work was identifiable as to place and time of performance and the damage is, therefore, not speculative. It is a fact, not speculation, that Carrier determined that 60 man hours of work over and above the normal man hours of work be performed in the Illinois District. Awards cited for Carrier that speculative damages should not be granted are, therefore, also not relevant.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Carrier violated the Agreement.

AWARD

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1965.