

Award No. 13833
Docket No. SG-13538

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Central of Georgia Railway Company:

(a) That the Carrier violated the current Signalmen's Agreement, especially Rules 18(d) and 18(c) and any other applicable rules, when, on February 21, 1961, Assistant Signalman Dobbs was called at 11:30 P. M. to perform overtime work and worked until Noon, February 22, 1961, on this emergency overtime work. Senior Assistant Signalman O. E. Kitchings should have been called for this overtime work.

(b) That O. E. Kitchings, Assistant Signalman, be paid for six (6) hours at the time and one-half rate, and five and one-half (5½) hours at the double-time rate account of not being called per Rule 18(d). [Carrier's File: SIG 465.]

EMPLOYEES' STATEMENT OF FACTS: At 11:30 P. M., February 21, 1961, the Carrier notified Assistant Signalman W. S. Dobbs to accompany a Communications Maintainer to help in the operation of his motorcar while looking for trouble on Carrier's communications system. Communications work is not covered by the Signalmen's Agreement on this Carrier. Assistant Signalman Dobbs was sleeping in a camp car located at Sylacauga, Alabama, at the time he was called, as was Claimant O. E. Kitchings, an Assistant Signalman who is senior to Mr. Dobbs.

The Brotherhood maintains that the Carrier should have used the senior available Assistant Signalman for this overtime work and the Carrier maintains that it can use anyone it desires without regard for seniority. The Carrier bases its position on the basis that the work performed by Mr. Dobbs was not signal work, and the Brotherhood's position is based on the fact that when an employee covered by the Signalmen's Agreement is used in any capacity by the Carrier he is afforded the full protection of the Signalmen's Agreement as ar all other affected employees.

AWARD

Claim denied."

Third Division AWARD 6379 (Kelliher)

"The Petitioner has failed to sustain its burden of proof to show a contract violation.

AWARD

Claim denied."

Third Division AWARD 6378 (Kelliher)

"Based upon an analysis of all the evidence, it must be found that the petitioners have failed to sustain the burden of proof and, therefore, claim is accordingly denied.

AWARD

Claim denied."

Third Division AWARD 5418 (Parker)

" * * * Under our decisions (see e.g., Award No. 4011) the burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance and where that burden is not met, a denial Award is required for failure of proof.

AWARD

Claim denied."

And there are many other Awards of the Board on this point, too numerous to mention.

It is well settled that the freedom of action of a Carrier is restricted only by statutory enactment or by the terms of an effective agreement. The latter does not prohibit the act which is the subject of this claim nor does it require payment of the penalty demanded. The instant claim is without any semblance of merit, and it should be denied in its entirety.

OPINION OF BOARD: At 11:30 P. M., February 21, 1961, Carrier assigned Assistant Signalman W. S. Dobbs to accompany a Communications Maintainer to help in the operation of his motor car while looking for trouble on Carrier's communications system. Claimant and Dobbs were both sleeping in a camp car when Dobbs was called. Claimant was senior to Dobbs.

The Organization claims that the senior man should have been used for this overtime work. Carrier maintains that since the work was not signal work, it was not subject to the Signalmen's Agreement and, therefore, not subject to the seniority requirements thereof.

We have previously held that where Carrier is not obliged to use employees of a certain class, but chooses to do so, it is obliged to choose from that

class according to seniority. Awards 13177, 13469 and awards therein cited. In not using Claimant Carrier violated this principle and Claimant is entitled to be compensated for the lost opportunity to perform this overtime work.

The facts indicate, however, that Claimant was utilized and paid at the straight time rate for the morning of February 22, 1961, part of the dispute time. The amount he was paid for this utilized time is a proper deduction against 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 the Carrier violated the Agreement.

AWARD

Claim sustained to extent indicated in the Award.

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.