

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, 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) The Carrier violated Article 1, Sections 1 and 3; Article 2, Section 23(h); and Article 4, Section 20 of the current agreement, on June 27, 1961, at 7:33 P.M., when it assigned Maintainer's work to Signal Inspector C. E. Keene and not to the regular assigned employee. Inspector Keene was notified there was a TOL on No. 1 Track, east of the Westbound Home Signal at Cork.

(b) Signal Maintainer B. E. Britcher be paid 2.7 hours at the overtime rate.

(System Docket 328 — Philadelphia Region (Hbg. District Case 16628))

EMPLOYEES' STATEMENT OF FACTS: This dispute arose as a result of the Carrier assigning Maintainer's work to a Signal Inspector, instead of to the regularly assigned Maintainer on whose territory the work was performed.

The following is a brief outline of the events leading up to the dispute:

At 7:33 P.M. on Tuesday, June 27, 1961, "F" Office reported a TOL (track occupied light) on No. 1 track East of Lancaster Passenger Station to Conestoga Home Signal (20L). Leading Maintainer H. C. Resh and Signal Maintainer Morris were called but neither were at home, after which the Carrier called Signal Inspector C. E. Keene, who responded to the call and corrected the trouble.

The Carrier bases its position in this case on the contention that the trouble described above was of such an urgent nature that it could not wait for the regularly assigned Maintainer to travel 55 miles to look for the trouble; even though the Carrier states in the Joint Submission that No. 1 track from the station to Conestoga was not used for 13 hours after the track occupied light was displayed. The Carrier admits in the Joint Sub-

OPINION OF BOARD: On Tuesday, June 27, 1961 at 7:33 P.M. the operator at "Cork" interlocking tower, Lancaster, Pa., observed a track occupied light (TOL) displayed for No. 1 track from a point just east of Lancaster Station to Conestoga Home Signal 20-L. No train was occupying this segment of track. When "F" office received this information, the employee on duty first phoned a Leading Maintainer, then a Signal Maintainer, both of whom lived in Lancaster. Neither was at home. He thereupon called Signal Inspector C. E. Keene, another Lancaster resident, who responded, came to work, and reported the trouble corrected at 8:35 P.M.

Claimant B. E. Briteher, who lived in Duncannon, Pa., 55 miles from Lancaster, was the regularly assigned Signal Maintainer in the territory involved and had completed his regular assigned tour of duty at 3:30 P.M. Petitioner claims he should have been called.

The Organization's claim that Carrier was obligated to call Claimant pursuant to Article 2, Section 23 (h) cannot be sustained. This provision covers work "required by the Carrier to be performed on a day which is not a part of any assignment . . ." Since June 27, a Tuesday, was part of a regular five-day assignment, this Section is inapplicable. Petitioner misread the last phrase in 23 (h) — "in all other cases by the regular employee" — to cover an assignment on any day, although it clearly refers only to assignments on those days which are not part of any assignment.

While Petitioner, in its original Claim, alleged a violation of Article 4, Section 20, it did not explain either in the JOINT STATEMENT or in subsequent submissions, how it believed this provision was abridged. Consequently, this charge cannot be sustained.

Petitioner's third contention is that Carrier's assignment of a Signal Inspector violated Article 1 — Classifications, and Sections 1 and 3. Section 1 describes an Inspector as

"An employee whose primary duties consist of inspecting the facilities, equipment or apparatus installed, maintained or repaired by leading maintainers, leading signalmen, signal maintainers, telegraph and signal maintainers, telegraph and telephone maintainers, or signalmen with or without assistant signalmen or helpers, and supervising the work of such employees."

Section 3 states that a Signal Maintainer is "An employee qualified and assigned to perform the work of a mechanic in the Telegraph and Signal Department."

Petitioner points out that the work in question was that of a Maintainer and is not included in the description of Inspectors' duties. Consequently, Mr. Keene was improperly assigned.

Carrier acknowledges that the work in question is generally performed by Maintainers and is not usually assigned to Inspectors. However, it states, the urgency of the situation, coupled with the "unavailability" of Claimant (due to the distance factor) made it necessary to use Inspector Keene on an emergency basis. Moreover, it contends, there was no contractual obligation to call any particular employee since the Agreement contains no call rule.

While many arguments and contentions have been introduced since this claim left the property, the Board, as is custom, will not consider those

made for the first time after the case was submitted to us. Significantly, in its February 12, 1962 Statement of Position Carrier emphasized its belief that an "emergency" existed, and concluded that "when an employe lives quite a distance from his headquarters, Management would not be obligated to call him for emergency service as involved herein." In its April 20, 1962 denial letter, moreover, Carrier reiterated this position, stating that "From a practical standpoint, Management could not afford to wait until the Claimant took time to reach the scene." The Claimant, it stated, "who was regularly assigned as a Maintainer at Lancaster on the section on which the trouble occurred, was not called because he resides at Duncannon, Pa., 55 miles from Lancaster, Pa." Similar statements appear in Carrier's denial letters of November 10 and October 4, 1961. (Emphasis ours.)

At least for purposes of this case, then, it is fair to conclude that Carrier would have called Claimant (for whatever the reason) had it not believed an "emergency" situation required immediate attention. The question here, therefore, and the only one to be decided (aside from the above rulings on Article 2, Section 23 (h) and Article 4, Section 20) is whether an emergency existed.

Article 2, Section 9 (a), cited by Carrier, is not in point in determining this question, in our judgment, although it requires that "employees notified or called to perform service outside of and not continuous with the regularly assigned working hours shall report for duty with reasonable promptness . . ." This clause prescribes the manner in which an employe must respond to an after-hours call; it does not constitute a requirement that an employe who wants to be called must live within a certain distance of his assigned work place.

An "emergency," according to Webster's New World Dictionary, is a "sudden, generally unexpected occurrence or set of circumstances demanding immediate action." The Board has held that in an emergency a Carrier must be allowed considerable latitude in making on-the-spot judgments. See, for example, Awards 12299, 13316, 9394 and others. Whether any given situation truly represents an emergency, of course, depends on the particular facts and circumstances.

The evidence here shows that: (1) Approaching Lancaster from the west the railroad is two track main line; (2) at Lancaster it widens to four tracks in the station area; (3) after leaving Lancaster Station it narrows to three tracks and finally to two tracks in crossing Conestoga Creek; (4) the territory involved in the June 27, 1961 incident was the three track area; (5) the TOL occurred on that part of No. 1 track which runs closest to the station platform (this was not one of the through tracks); (6) Train No. 24, an eastbound passenger train, was scheduled to leave Lancaster at 9:38 P.M.; (7) Claimant lived 55 miles away and would have needed more than an hour to get to the site of the problem; (8) Inspector Keene corrected the trouble in less than an hour.

Carrier's principal point is that Train No. 24 normally made its station stop on No. 1 track (close to the platform) and then crossed over to No. 2 (the through track) departing from the station. But, if Track No. 2 had been occupied (by a stalled freight train, for example) at 9:38 P.M., and if the TOL on Track No. 1 had not been corrected by that time, Train No. 24 would have been delayed, and this, in Management's opinion would have constituted an emergency. There is no evidence, however, concerning the

likelihood of a freight train coming through Lancaster at that hour or of stalling at that particular point. Conjecture on the probability of such events occurring in conjunction with the TOL on Track No. 1 is pointless. But the mere possibility that two such events might have occurred simultaneously and resulted in delaying Train No. 24 is not sufficient, in our judgment, to warrant a finding that an emergency existed in the sense that term is most frequently used in this industry.

Accordingly, the claim for 2.7 hours' pay will be sustained. Mr. Britcher should be paid at the overtime rate since that is the rate he would have earned had he been called.

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 violated to the extent found in the above opinion.

AWARD

Claim sustained for 2.7 hours at the overtime rate for B. E. Britcher.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December 1965.