



Award No. 14318
Docket No. SG-14331

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island and Pacific Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Scope Rules (a), (b), (l) and (m), as well as the seniority Rules, when it used Maintenance of Way forces on March 25, 26 and 27, 1962, to make repairs on the Missouri-Kansas Division to signal line wires which had been damaged by a storm.

(b) Foreman R. G. Fuller; Signalmen L. W. Egger, J. L. McKeever; Assistant Signalman S. G. Wall; Signal Helpers T. Morton, L. A. McDonough and H. M. Ross, who were employed in Signal Gang No. 4 headquartered at Amarillo, Texas, be paid, at the punitive rate in proportionate shares, the 136 hours worked by Maintenance of Way forces in making these repairs. [Carrier's File: L-130-250]

EMPLOYEES' STATEMENT OF FACTS: During the period covered by this dispute, March 25, 26 and 27, 1962, the Carrier used Maintenance of Way forces to make repairs to signal line wires, which had been damaged by a snow storm on the Missouri-Kansas Division. Carrier did not call signal employees to perform this work although all signal employees are required to keep the Carrier informed of their current telephone numbers and addresses. Maintenance of Way employees are not covered by the Signalman's Agreement and have no contract right to perform any of the work covered thereunder.

The work involved is recognized by both the Carrier and Organization as being work covered by the Signalmen's Agreement. This fact is not in dispute.

The storm which damaged the signal system was not unexpected as it was forecast by the weather bureau and made known to the public through various news media, including radio and television.

On March 10, 1962, General Chairman R. A. Watkins filed a claim in behalf of Foreman R. G. Fuller and the members of his signal gang assigned to Carrier's Signal Gang No. 4 for 136 hours at punitive rate to be paid Claimants on a proportionate basis. The initial claim is Brotherhood's Exhibit No. 1.

from the Vice President-Personnel to the General Chairman dated July 20, 1962 (Carrier's Exhibit "B").

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimants are members of Signal Gang No. 4. They were off from March 23 through March 26, 1962, having previously made up time in accordance with Rule 21, and were scheduled to return to work on March 27, under normal circumstances. During the period covered by the instant dispute, March 25 to 27, 1962 inclusive, the Carrier used Maintenance of Way forces to make repairs to signal line wires damaged by a snow storm. On March 24, the signals were taken out of service between Goodwell, Oklahoma and Dalhart, Texas, and the trains were operating on train orders; thus, permitting them to operate at 59 miles per hour pursuant to I.C.C. Regulations.

In this situation, the Carrier used Maintenance of Way men who were immediately available to repair the damaged signal line wires. In addition, the Carrier attempted to get the men in Signal Gang No. 4 back to work by contacting the Foreman of the gang. The latter, also one of the Claimants herein, advised the Carrier that he knew of no way to contact the men. Thereupon, the Foreman was instructed that upon the return of the men on March 27, the entire gang should proceed directly to the storm damage area. Claims were thereafter submitted on behalf of the various members of Signal Gang No. 4, which were duly declined.

In effect, the Carrier's defense is based on the emergency nature of the work precipitated by the storm, as well as having contacted the Foreman of the Gang. Neither of these defenses stand up under analysis.

Preliminary to our discussion, we recognize that the nature of the work performed by the Maintenance of Way forces was work covered by the Organization's Agreement — which is not disputed. Further, the situation depicted herein is not considered an emergency, as the Carrier's trains were enabled to move despite the damaged signal line — the line was open and operating.

The crux of the issue, therefore, poses the question — whose responsibility was it to contact the men of Signal Gang No. 4? Was it the responsibility of the Foreman or the Carrier? Unquestionably, it developed upon the Carrier, as it required employees to file their current telephone numbers with the Signal Engineer — not with the Foreman of the Gang. There is not a shred of supporting data by the Carrier, to explain, countenance, absolve, or explicate why it did not attempt to communicate with the men. Merely, that it contacted the Foreman, and even as to the latter, it did not direct him to proceed to the storm area.

It is, therefore, our conclusion that the Carrier violated the Agreement. However, the remedy is modified to the extent that only for March 25, 1962, Sunday, payment shall be allowed at the punitive rate. Payment for March 26 and 27, Monday and Tuesday, shall be on the basis of straight time rates for hours within the hours of regular assignment and overtime rates for hours outside the regular assignment. (Rule 17)

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 Agreement was violated.

AWARD

Claim sustained per Opinion and Findings.

Claim (a) sustained.

Claim (b) modified to the extent that only for March 25, 1962, Sunday, payment will be allowed at the punitive rate. For March 26 and 27, Monday and Tuesday respectively, the straight time rate will be allowed for hours within the hours of regular assignment and overtime rates for hours outside the regular assignment.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of April 1966.