

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, 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 Rule 19, when it did not call the regularly assigned first trick Signal Maintainer at U. D. Interlocking Plant, Joliet, Illinois, for trouble that occurred at 4:10 A. M. on January 17, 1962.

(b) The Carrier now be required to compensate Mr. H. Shank, the regularly assigned first trick Signal Maintainer with headquarters at U. D. Interlocking Plant, Joliet, Illinois, for a minimum call of two hours and forty minutes at the time and one half rate of pay. [Carrier's File: L-130-246]

EMPLOYES' STATEMENT OF FACTS: This dispute is a result of the Carrier's action of calling the second trick Signal Maintainer for overtime work when it should have called the first trick man.

The record will show that the basic issue for this Board to decide is whether or not Carrier met its contractual obligation under Rule 19 of the Signalmen's Agreement. The basic facts are not in dispute.

The signal maintenance force assigned to the territory on which the disputed work was performed includes a first trick man, a second trick man, and a relief man. Claimant Shank is the first trick man, and his assigned hours are from 6:00 A. M. to 3:00 P. M., less a one-hour lunch period.

Inasmuch as more than one signal maintenance employee is assigned to the same territory, the Carrier maintains a list (copy is posted in M. C. Tower)

had a telephone, would they be allowed to use it to call him, and the General Chairman stated they would but that if they didn't get him over the telephone then it was their responsibility to call him by other means. The General Chairman also pointed out that Carrier had agreed that it would call the regular assignee, and that the rule (19) was very plain in providing that the regular assignee will be called.

The General Chairman also pointed out, during conference, that Mr. Shank resides near his headquarters and that it would not have been an inconvenience to call him and neither was it impossible, and Carrier agreed that it was not impossible. Carrier still insisted that as long as Mr. Shank had a telephone, all that Carrier was obligated to do was call him on the telephone and that if he didn't answer then he was not available for call. Carrier's attention was then directed to Third Division Awards, including Nos. 3292 and 3845.

As indicated by the correspondence cited above, this dispute was handled in the usual and proper manner on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement.

There is an agreement in effect between the parties to this dispute, bearing an effective date of July 1, 1952, as amended, which is by reference made a part of the record in this dispute.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: 1. There is an Agreement in effect between the Chicago, Rock Island and Pacific Railroad Company and Brotherhood of Railroad Signalmen of America bearing an effective date of July 1, 1952. A copy of this Agreement is on file with your Board and by reference is made a part of this submission.

2. From Joliet Union Depot during the morning rush hours the Rock Island runs 6 commuter trains carrying thousands of passengers into Chicago. These trains leave Joliet at 5:20 A. M., 6:10 A. M., 6:39 A. M., 7:05 A. M., 7:30 A. M. and 8:15 A. M.

3. At about 4:10 A. M. on January 17, 1962, a Wednesday, switch trouble occurred at the Joliet Union Depot Interlocking plant which necessitated immediate action to correct before the scheduled parade of commuter trains. Under the agreement the first shift Signal Maintainer H. Shank, the claimant, should have been called and he was called by telephone — the call being placed at 4:10 A. M., but the operator was unable to get an answer to the call, consequently the claimant could not be reached. Therefore, the second shift Signal Maintainer B. E. Peet was called, since Mr. Shank could not be reached, and this claim followed.

OPINION OF BOARD: The controlling issue involved herein is whether or not the Claimant was called for duty when an emergency arose as required by Rule 19 of the Agreement.

The pertinent provisions of said Rule 19 are as follows:

“ . . . Unless registered absent, the regular assignee will be called.”

It is undisputed that the Claimant was not registered absent, and it is agreed by the parties hereto that the Claimant was the regular assignee entitled to be called.

The Organization's position is that while there is no evidence to affirm that the Carrier tried to call the Claimant, it does not categorically deny that such an attempt was made by telephone; and that the dispute therefore should be determined on whether or not the Claimant was available. The Organization further argues that Claimant was available because he was not registered absent and that he was home and didn't hear the telephone ring; and that because of the hour (4:10 A. M.) and the Claimant's age (71 years) he certainly had to be home; and that he answered at least four other calls during the same month; and therefore since Claimant was available, the Carrier violated the agreement when it failed to make contact with the Claimant.

The Carrier's contention is that the Claimant was called by telephone at 4:10 A. M., and when the Claimant failed to answer said phone call, therefore the Carrier was then justified in calling the second shift maintenance man, who performed the work.

The Organization in support of its position cites Awards 11333 and 11558, involving the same parties herein, and allege that said awards are controlling in the instant case. A close examination of said awards reveal that the factual situations can be distinguished from the facts in the instant case. In Award 11333 the facts indicated that no call was ever made to the Claimant because Carrier admitted it did not have Claimant's telephone number nor home address. In Award 11558 the Carrier admitted that the Claimant wasn't called but unsuccessfully attempted to justify same due to Claimant's failure to notify the person designated by management of his regular point of call.

The Organization argues that when the attempt to contact Claimant failed, Carrier should have used other means to have called the Claimant. This argument was refuted in Award 11743 when the Referee stated:

" . . . To place this burden upon Carrier would mean that it would have to continue to pursue other means until it was successful in reaching employe or it would have to be regarded as having violated the agreement. The rule does not undertake to make that statement. . . ."

It is the opinion of this Board that Carrier did make an effort to call Claimant on the date in question and that the Carrier was under no obligation to use any other means to contact the Claimant.

The question remains was this effort on the part of the Carrier in making the phone call to Claimant sufficient so as to meet the requirement of the rule. We feel that the attempt on the part of the Carrier to contact the Claimant was sufficient to meet the requirements of the Rule and therefore we must conclude that the Agreement was not violated and this claim must be 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 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1966.