



Award No. 15397
Docket No. SG-15046

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie-Lackawanna Railroad Company that:

Signal Maintainer C. L. Moen and Assistant Signal Maintainer R. J. Senkiew be compensated at the penalty rate of pay for all time worked by other Signal Department employees in excess of the time they were permitted to work account derailment of Train 99 on Tuesday, April 30, 1963.

[Carrier's File: 155.1-4; Item 109]

EMPLOYEES' STATEMENT OF FACTS: Prior to the time this dispute arose, Claimants had been assigned to signal maintenance positions on a specific territory. On April 30, 1963, a train derailment on that territory resulted in considerable damage, including damage to the signal system, and signal employees were required to work overtime for several days in order to restore the signal system to service.

This claim is a result of the fact that other signal employees were permitted to perform signal work on Claimants' territory while they were not permitted to work. We contend that Claimants should be compensated at the penalty rate of pay for the amount of time that other signal employees worked on their territory in excess of the amount of time they were permitted to work. Our records indicate that several signal gangs were used, and that some of the gang men who were used had less seniority than Claimants. In fact, at least four members of Gang No. 79, Messrs. John Murray, Paul Burk, F. Ferraro and H. A. Early, were new employees, having been hired during the month of April, 1963.

The Local Chairman initiated the instant claim by presenting it to the Supervisor Communications and Signals on May 22, 1963. A copy thereof is Brotherhood's Exhibit No. 1. Brotherhood's Exhibit No. 2 is the Supervisor's denial of June 4, 1963.

were permitted to work, due to the derailment of Train 99 on Tuesday, April 30, 1963.

At the time of the derailment, C. L. Moen was regularly assigned to this territory as Signal Maintainer, and R. J. Senkiew was regularly assigned as Assistant Maintainer.

We understand it was necessary to work men at penalty time Tuesday, April 30 to Sunday, May 5th, 1963.

Since Moen and Senkiew were not permitted to work, but were sent home, while others were permitted to work, we contend this to be in violation of Rule 14(h), which reads as follows:

'Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available furloughed unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee.' (Emphasis mine.)

May I have your prompt reply?

Yours truly,

/s/ E. J. Fisher
Local Chairman
Local 45, BRS

cc: W. D. W."

Claim was denied on June 4, 1963 and subsequently handled on appeal within the time limit provisions of Article IV of the August 21, 1954 Agreement up to and including Carrier's highest officer designated to handle such matters under the Railway Labor Act, where it was discussed in conference on November 20, 1963 and denied.

Attached as Carrier Exhibits A through J are exchanges of correspondence involving handling of this dispute on the property. Being that the parties were unable to handle this matter to a conclusion, the Organization has advanced same to this Board for adjudication.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim here is based on the argument by the Organization that Carrier had no right to send Claimants home and permit other signal employees to perform overtime work on Claimants' territory. Organization states that Claimants were the "regular employees" entitled to the overtime of their positions ahead of the other employees who performed it. Organization failed to prove that the involved work belonged to Claimants' positions in the face of Carrier's assertions that it did not; thus, we will deny the Claim because Organization failed to prove an element essential to establish its case: i.e., that Claimants were the "regular employees" entitled to this overtime work. [See Award No. 12850]

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of March 1967.