Award No. 15998
Docket No. SG-15977

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 17(d), when, on August 8, 1964, employes of Signal Gang No. 13 who were junior to Signalmen C. F. Wynn and C. K. Armstrong were called and used at Verbena, Alabama, to restore a southbound wayside signal which had been demolished by some protrusion on a northbound train.

(b) Carrier be required to pay Messrs. C. F. Wynn and C. K. Armstrong each an amount of time equal to that which was made by the junior employes. [Carrier's File: G-357-12]

EMPLOYES' STATEMENT OF FACTS: This dispute resulted when Carrier assigned two (2) employes in Signal Gang No. 13–Birmingham Division to perform overtime service on August 8, 1964, when there were senior available employes who were not used.

On Sunday, August 8, 1964, a southbound wayside signal at Verbena, Alabama, was knocked down by some object which protruded from a northbound train. Two Signal Maintainers were called, and they were instructed to call two junior Signalmen from Gang No. 13. The employes were called at approximately 10:30 P. M. and the signal was restored at about 6:00 A. M. on August 9.

Claimants C. F. Wynn and C. K. Armstrong, the senior Signalmen in Signal Gang No. 13 to whom Carrier failed to give preference in the overtime assignment in accordance with the provisions of Rule 17 of the Schedule Agreement, had furnished their home telephone numbers to Supervisor, Communications and Signals W. G. Ray. They would have responded promptly had they been called.

In your letter of April 6, 1965, you declined the claim because you considered an emergency existed and Wynn and Armstrong lived too far away to be considered available.

I believe your decision was based on the assertion the damaged signal delayed traffic until it was replaced about 6 A. M., August 9.

I believe you erroneously considered this situation an emergency, because you thought the damaged signal did delay traffic until it was repaired. In my opinion this was not an emergency, especially in view of the fact that information I have received indicates no train passed this location while the signal was inoperative, also no train was expected at this location until approximately (8) eight hours after the junior gang men were called.

In view of the above, would you please reconsider your decision in this case, and inform me if you will allow it paid.

Yours truly,

/s/ J. T. Bass
General Chairman

cc: File
T. H. Gregg, V. P. BRS
Grand Lodge
J. D. Wilhite, L. C. BRS
C. F. Wynn"

OPINION OF BOARD: When the dispatcher was unable to clear certain signals on the main line, Signalmen Dennis and Gore were called to work in preference to Signalmen Wynn and Armstrong, the Claimants herein. Signalman Dennis resided approximately 13 miles from the damaged signal, and Signalman Gore 16 miles while Claimants Wynn and Armstrong resided 135 and 250 miles from the signal, respectively.

Both Claimants were senior employes and both base their claims on Rule 17(d) of the Agreement, which reads as follows:

"(d) When overtime service is required of a part of a group of employes who customarily work together, the **senior available employes of the class** involved shall have a preference to such overtime if they so desire." (Emphasis ours.)

Claimants were not in "available status" as contemplated and intended by Rule 17(d). See Awards 12519 and 12520 by Referee West.

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 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 8th day of December 1967.

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