

**Award No. 16666
Docket No. SG-17134**

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert A. Franden, 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:

On behalf of Assistant Signal Maintainer T. Christian, Croxton, New Jersey, for eight (8) hours' pay at the time and one-half rate for December 9, 1965. (Carrier's File: 140; Item Sig. 131 General Chairman's File No. 268)

EMPLOYEES' STATEMENT OF FACTS: Claimant T. Christian is a regularly assigned Assistant Signal Maintainer at Croxton, New Jersey, with a regular work week of Monday through Friday, from 7 A. M. to 3:30 P. M.

On Thursday, December 9, 1965, Claimant was required to vacate his position because it was his birthday. Instead of blanking his position, Carrier used another employee to assist the regularly assigned Croxton Signal Maintainer.

Under date of December 13, 1965, the Brotherhood's Local Chairman filed a claim on behalf of Claimant for eight (8) hours' pay at the time and one-half rate, on the basis the work would have been performed by him had he worked.

The claim was subsequently 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.

Pertinent exchange of correspondence on the property is attached hereto as Brotherhood's Exhibits Nos. 1 through 9. Not shown are brief letters in which Carrier officials were timely notified of the rejection of their decisions.

There is an agreement in effect between the parties to this dispute, bearing an effective date of March 1, 1953, as amended, which is by reference made a part of the record in this dispute.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Signal Gang 19 on Carrier's New York Division consists of a Maintainer and Assistant Maintainer. The headquarters of this gang is Croxton, New Jersey and its assigned territory is MP 1.42 to 4.4 on the main line and MP 2.2 to 10.32 on the Northern Branch, total trackage 28 miles.

At the time of claim, T. Christian, hereinafter referred to as claimant was assigned as Assistant Maintainer in Gang 19.

On December 9th, as the plans were that Gang 19 would perform routine maintenance work and as such work for the day could adequately be performed by the Maintainer, claimant was informed on December 8th, that in accordance with Article II, Section 6 (a) of the November 20, 1964 Agreement, he would not work on December 9th, his birthday-holiday.

After the Maintainer in Gang 19 had started work, the Track Supervisor called and informed the Signal Supervisor that the switch points at "BR" Interlocking Plant in Gang 19's territory were to be changed out that day by the section gang. This necessitated the Signal Supervisor then ordering the regular Maintainer to go to "BR" to make the necessary adjustments and, to promptly provide assistance, he ordered Maintainer Sherm of Relief Gang 50 to also go to "BR". To then have called the claimant who lived 20 miles from "BR" would have delayed the entire project. Moreover, the Signal Supervisor was not even aware of claimant's whereabouts or availability. Relief Gang 50 is maintained for the purpose of providing employes for emergency work, sickness, vacations and for unforeseeable situations such as existed in the instant case.

Under date of December 13, 1965 (Carrier Exhibit A) claim was instituted with the Signal Supervisor by the Local Chairman and denied on December 27, 1965. It was thereafter handled on appeal to Carrier's highest officer designated to handle such matters, where it was denied (Carrier Exhibit B) and discussed in conference with denial confirmed July 11, 1966 (Carrier Exhibit C).

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was regularly assigned as Assistant Signal Maintainer at Croxton, New Jersey. His birthday fell on Thursday, December 9, 1965 which was a workday of his workweek. Claimant was given his birthday off. On that day another employe was sent to assist the Signal Maintainer at Croxton, New Jersey. Claimant claims he had a prior right to the work and should have been used.

Under the holding in Award 15227, followed in Awards 15638 and 15911, we find the claim to be meritorious and it will be sustained.

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 by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1968.

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