

Award No. 17056
Docket No. SG-17500

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CHICAGO, ROCK ISLAND & 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:

On behalf of Mr. B. E. Peet, 1st trick Signal Maintainer at "UD" Interlocking at Joliet, Illinois, for two and eight-twelfths (2-8/12) hours' pay at the punitive rate in accordance with Rules 18, 19 and other rules of the Signalmen's Agreement, account on May 27, 1966, Carrier failed to call him to perform emergency work at "UD" Interlocking and called instead a Signal Maintainer regularly assigned to another territory. (Carrier's File: L-130-380)

EMPLOYEES' STATEMENT OF FACTS: On May 27, 1966 the Claimant, B. E. Peet, was the assigned first shift Signal Maintainer at UD Interlocking at Joliet, Illinois; Signal Maintainer Tarrant was also assigned at UD Interlocking, on another shift. Mr. L. L. Harris was assigned as a Signal Maintainer at Michigan Central Tower, a separate and distinct maintenance territory.

On the date in question, during the shift of Signal Maintainer Tarrant, signal service at UD Interlocking was interrupted when a signal cable which was a part of the electrical circuits of the interlocking was damaged in an accident. The Carrier called Maintainer Harris to work assisting Maintainer Tarrant in repairing the damage. Maintainer Harris responded, but was not used in making actual repairs to the damaged cable; he was released and paid a minimum call.

The Claimant was not called even though he was available and had a preferential right over Maintainer Harris to the subject call. The Brotherhood's Local Chairman, therefore, filed a claim for a minimum call (2 hours and 40 minutes at punitive rate) on behalf of the claimant.

The claim was handled in the usual and proper manner by the Brotherhood on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settle-

ment. Pertinent correspondence exchanged on the property has been reproduced and is attached hereto, identified as Brotherhood's Exhibits Nos. 1 through 8.

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 a copy of an Agreement in effect between the Chicago, Rock Island and Pacific Railroad Company, hereinafter referred to as the Carrier, and certain of its employes represented by the Brotherhood of Railroad Signalmen, hereinafter referred to as the Brotherhood, bearing an effective date of July 1, 1952, on file with your Board which by this reference is made a part of this submission.

2. Claimant B. E. Peet on the date claimed was employed as the First Trick Signal Maintainer at the Union Depot Interlocking Plant at Joliet, Illinois, with assigned hours 6:00 A. M. to 3:00 P. M.

3. On May 27, 1966, the interlocking plant went dead during the assigned hours of the Second Trick Signal Maintainer which resulted in Signal Maintainer L. L. Harris, assigned at another point in Joliet on first trick, being called by the towerman (telegraph employe) in charge of UD Tower to assist the regular second trick signal maintainer repair the trouble. However, the Signal Maintainer called to assist the Second Trick Signal Maintainer was not needed, and did not perform any work.

4. The instant claim was filed and progressed by the Brotherhood in behalf of Signal Maintainer Peet, claiming since the wrong maintainer was called he (Peet) should be paid a minimum call, irregardless of the fact that the improperly called signal maintainer performed no service on the date claimed.

5. To avoid burdening the record, Carrier has not included copies of the correspondence on the property concerning this claim, as it is anticipated the Brotherhood will produce such correspondence as a part of its submission. However, Carrier will refer to various portions of this correspondence, as necessary, and will reproduce pertinent portions of same when appropriate. Carrier will also take exception in its rebuttal statement to any errors or omissions in the Brotherhood's reproduction of such correspondence.

6. The procedures followed in the progression of this claim were timely and in accordance with the applicable rules in effect on this property and the Railway Labor Act, as amended.

OPINION OF BOARD: On May 22, 1966, Claimant was the assigned first shift Signal Maintainer at UD Interlocking at Joliet, Illinois; Signal Maintainer Tarrant was also assigned at this location on another shift; and Signal Maintainer Harris was assigned at Michigan Central Tower, a separate maintenance territory. On this date a signal cable was damaged in an accident and Carrier called Maintainer Harris to assist Maintainer Tarrant

in repairing the damage. Harris responded to the call but was not used. He was released and paid a minimum call. The Organization contends that Claimant had a preferential right to the call over Maintainer Harris, and makes claim for a minimum call (2 hours and 40 minutes at the punitive rate). Carrier admits that the wrong signal maintainer was called, but contends that Harris performed no service which Claimant was entitled to perform; therefore, there is no basis for the claim. Carrier also urges that to allow this claim would be to allow double penalty.

This Board finds that the Organization is premising this Claim on Rule 18 of the current Agreement, of which the pertinent part is:

“Employee released from duty and notified or called to perform work outside of and not continuous with regular working hours will be paid a minimum of two (2) hours and forty (40) minutes at the rate of time and one half, * * *”

Carrier has cited Awards Nos. 16119 (McGovern), 16512 (Heskett), 16625 and 17043 by this Referee in support of its contention. This Board finds that these Awards, cited by Carrier, are clearly distinguishable from the instant case. Award 16119 involved a telephone call for information where no one reported for duty; Award 16512 involved an employee called back to prepare train orders who was compensated for this work, but was denied an additional call for leaving train orders at a designated place for pick-up; Award 16625, a sustaining Award, involved an employee who was rightfully called, but wrongfully used; and Award 17043 involved the calling of a restricted employee, who had knowledge of his restriction, whose call was cancelled by telephone before he left his home to report for duty. This Award (17043) also called for the interpretation of a rule that spelled out the requirement of “service”, which is not contained in the above quoted portion of Rule 18 involved in this dispute. The above quoted Rule 18 refers to employees “released from duty and notified or called to perform work * * *”

The record discloses that Signal Maintainer Harris was called or notified; that he responded to the call; that Carrier should have called Claimant instead of Harris; and that Harris was paid for the call. This Board finds that by responding to the call, Harris was entitled to the compensation set out in Rule 18 whether he was used or not. If the call had been cancelled prior to the response, this Board might have held otherwise.

It cannot be said, beyond a doubt, that a call for anyone under these circumstances was erroneous. The Carrier probably contemplated the possible need for the services of an assistant at the time. The error was made in the calling of the wrong employee—not in the calling of an unused employee. Therefore, this claim 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 Employee involved in this dispute are respectively Carrier and Employee 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.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of April 1969.