

Award No. 17062
Docket No. SG-17633

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company (former Pacific Electric Railway Company) that:

(a) The Southern Pacific Company (former Pacific Electric Railway Company) violated the current agreement between the Pacific Electric Railway Company and the Brotherhood of Railroad Signalmen, including revisions, when it failed and/or declined to call the regular assigned Signal Maintainer, Mr. W. E. Smith for signal trouble on November 11, 1966.

(b) Mr. W. E. Smith be allowed twenty four (24) hours at the time and one half rate of his assignment for November 11, 1966 at 6:30 P. M. until 6:30 P. M. on November 12, 1966. (Carrier's File: SIG 148-140.)

EMPLOYEES' STATEMENT OF FACTS: Claimant W. E. Smith is the regular Signal Maintainer on Watts District, with headquarters at Dominguez Yard, Compton, California. He works Monday through Friday, with Saturday and Sunday as rest days.

November 11, 1966, trouble occurred on his territory at Watts Blocks, (½ block south of 103rd Street, Wilmington Line).

At 6:30 P. M. a Signal Maintainer from another territory was called to clear the trouble and found extensive damage to Signal devices due to vandalism. He reported the damage to Assistant Supervisor Mr. F. R. Edmonson, who called Leading Signal Maintainer Mr. R. L. Minard. Leading Maintainer Minard arrived at 9:15 P. M., November 11 and remained as flagman until 7:30 A. M., November 12, when he called a signal gang to repair the damage. The Signal gang and the maintainer were released at 6:30 P. M., Saturday, November 12, 1966.

For the reason stated above your claim is denied."

Copy of this correspondence is attached as Carrier's Exhibit C.

By letter dated January 7, 1967, copy attached as Carrier's Exhibit D, Petitioner's Local Chairman advised Carrier's Division Superintendent that his decision was not acceptable and that the claim was being referred to the General Chairman for further handling. Attention is directed to the fourth paragraph of this letter, reading as follows:

"For the reasons stated above it is obvious that Mr. Smith did not receive a call at 6:30 P.M., November 11, 1966 to report to the Watts area on account of signal trouble."

On January 24, 1967, Petitioner's General Chairman wrote to Carrier's Assistant Manager of Personnel, appealing the decision of Carrier's Division Superintendent, alleging "On November 11, 1966 at 6:30 P.M., signal trouble was reported . . ." In support of claim it was stated, "Mr. Smith was at home, available for call, his telephone was in good repair, and Mr. Smith should have been called for this service as in all past like circumstances." No rule violation was cited. This correspondence is reproduced and attached as Carrier's Exhibit E.

Carrier's Assistant Manager of Personnel acknowledged the appeal on January 31, 1967, and on February 8, 1967, advised "This case will be discussed in conference with you at the first available opportunity." On March 10, 1967, Carrier confirmed conference discussion and advised, in part, as follows:

". . . our file contains signed statement of H. H. Field, Telegraph Clerk at Los Nietos, dated December 21, 1966, attesting to the fact that he attempted to call Claimant Smith and that Mr. Smith did not answer; copy of this statement was furnished to you for your file."

The claim presented was denied. Copy of this latter correspondence is attached hereto as Carrier's Exhibit F. (Copy of the statement of Telegrapher Clerk Field, dated December 21, 1966, is reproduced as Carrier's Exhibit A.)

On March 15, 1967, Petitioner's General Chairman, referring to Carrier's denial of March 10, 1967, wrote to Carrier's Assistant Manager of Personnel, taking exception to the supported fact that claimant had been called for the service in question, and stated in part therein as follows:

"You did not mention that I furnished you a copy of a statement by Mr. Smith's wife, which stated that Mr. Smith was at home, and his telephone was in good working order, and Mr. Smith was available for work, during the hours which this claim was made for."

This correspondence, together with the statement referred to therein, is reproduced and attached hereto as Carrier's Exhibit G.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner, the assigned Signal Maintainer for the Watts District, bases his claim upon Carrier's failure to call him for overtime work in his Watts District due to vandalism to equipment on November 11, 1966.

Petitioner asserts that the past practice has been for Carrier to call the Signal Maintainer of the district where the trouble is located. He alleges that this past practice was not adhered to by Carrier when the Signal Maintainer on the adjoining district was called to do the work.

Carrier avers that it did conform to past practice by first attempting to call Claimant by phone, and when he failed to answer the phone, the nearest Signal Maintainer was offered the work by Carrier; that Claimant did not cite any rule that was violated; that the record fails to show that Claimant or the Employee actually called performed 24 hours' overtime work, but that the called Employee was released at 10:30 P. M. on the same day and therefore the claim, if sustained, should be confirmed to not more than four (4) hours.

Carrier, in its ex parte submission to this Board, stated that Claimant carried out his regular assignment and also performed overtime work from 3:30 P. M. until 6:10 P. M. on this date due to acts of vandalism to Carrier's Signal plant at Watts, California. Carrier asserts that further acts of vandalism occurred in the Watts District after 5:30 P. M. and which were brought to Carrier's attention at 6:00 P. M. Carrier introduced into evidence a statement from Telegrapher-Clerk, W. H. Field, stating that at about 6:00 P. M. he tried to call Claimant but that Claimant failed to answer his phone. It is undisputed in the record that the adjoining Signal Maintainer was called at 6:30 P. M.

We feel that this claim should be sustained for the following reasons: First, Carrier asserts that there was an emergency, yet the employee offered the work was not called until 6:30 P. M., 30 minutes after Carrier was apprised of the emergency and 30 minutes after Claimant was called at 6:00 P. M. Inasmuch as Claimant was technically not off work until 6:10 P. M., and since Carrier did not call the nearest Signal Maintainer until 6:30 P. M., we feel that a second phone call to Claimant was warranted immediately prior to calling said nearest Signal Maintainer Mr. Minard. Carrier thus should have made a reasonable effort to contact Claimant by calling him a second time.

Concerning the claim for damages, the record discloses that Claimant asserted on the property that the called Signal Maintainer performed work during the entire 24 hour period, and the record further shows that Carrier did not in any manner refute this assertion.

Therefore, for the aforesaid reasons, we must sustain this claim.

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 Employees involved in this dispute are respectively Carrier and Employees 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.