

Award No. 17172

Docket No. SG-18087

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(SUPPLEMENTAL)**

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
CHICAGO, ROCK ISLAND AND 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 Signal Maintainer J. D. Boots, whose headquarters is Faribault, Minnesota, rate of pay is \$675.73 per month and assigned hours to work are 8:00 A.M. to 12:00 noon and from 1:00 to 5:00 P.M., Monday through Friday, for four (4) hours' pay at the overtime rate account from 5:00 P.M. to 9:00 P.M. on September 20, 1967, he was called for Signal L12 Red at Rosemount, Minnesota, and found and repaired a broken battery connection in the Milwaukee Road crossing signal case, which battery is maintained by a Milwaukee Road Signal Maintainer.

(Carrier's File: L-130-417)

EMPLOYEES' STATEMENT OF FACTS: There is at Rosemount, Minnesota, a track and signal facility used jointly by the Respondent Carrier and the Milwaukee Road. Included in the signal devices of this facility are signals which govern the movement of trains and a highway crossing signal.

On September 20, 1967, a broken battery connector on the battery of the crossing signal manifested its condition by causing signals governing the movement of trains on Carrier's track between Rosemount and Inver Grove to improperly display "stop" indications (Brotherhood's Exhibit No. 2). Signal Maintainer J. D. Boots, (Claimant) is assigned to maintain the involved signals which govern the movement of the Carrier's trains; the crossing signal, including the battery and battery connector here involved, is maintained by an employe of the Milwaukee Road.

The Claimant was called at about 5:00 P.M. and worked until 9:00 P.M. Since Claimant's assigned work hours end at 5:00 P.M., he worked four hours outside of his assigned hours.

There is an Agreement in effect between the parties to the dispute bearing an effective date of July 1, 1952, as amended, which is by reference made a part of the record of this dispute. Pertinent rules of that Agreement are:

4. Claimant Signal Maintainer is headquartered at Faribault, Minnesota and is paid a monthly rate of \$675.73. His period of assignment is 8:00 A.M. to 5:00 P.M., Monday through Friday. The date and time on which the incident occurred was 4:50 P.M., Wednesday, September 20, 1967.

5. The Organization's position in this dispute is predicated on the application of Rules 17, 18 and 62 of the Signalmen's Agreement. The Carrier denies that the application of Rules 17, 18 and 62 are in point in the sense that they sustain the position of the Organization in this dispute or the payment claimed in connection therewith. Accordingly, this dispute arose and was progressed to your Board for adjudication.

6. To avoid burdening the record, Carrier has not included copies of the correspondence on the property concerning this claim as it is anticipated the Employees 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 Organization's reproduction of such correspondence.

7. The time limits and progression of the instant dispute were timely and in accordance with the applicable rules in effect on this property and the Railway Labor Act, as amended.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts indicate that on September 20, 1967, a malfunction in the crossing signal was detected at Rosemount, Minnesota. This facility is used jointly by the Carrier and the Milwaukee Road. The Claimant, a Signal Maintainer, is regularly assigned to maintain the signals which govern the movement of the Carrier's trains. On the day in question, the Claimant was notified at approximately 4:50 P.M., of the signal failure. He proceeded to investigate the trouble and discovered the cause to be a broken battery strap at Rosemount, in the Milwaukee crossing Signal Case—outside his assigned territory—and then made the necessary repairs. Thereafter, the Organization filed the instant Claim for four hours at the punitive rate, predicated on a violation of Rules 17 and 62.

The basic issue presented herein is controlled by Rule 62, paragraphs 3 and 6, hereinafter quoted:

"(3) No overtime is allowed for time worked in excess of eight (8) hours per day on the regularly assigned five (5) days per week the employee is scheduled to work, nor on the first scheduled rest day (6th day) of the work week or holidays; on the other hand, no time is to be deducted unless the employee lays off on his own accord."

"(6) Employees covered by this rule who are required by the Carrier to perform work outside the limits of their territory outside the assigned hours of their work week will be compensated for such service under the rules applicable to other employees of the same class as provided in Rules 17 and 18. However, this paragraph shall not apply to Foremen working under Rule 81(d)." (As amended 6-30-66.)"

It is apparent that the Organization bases its claim on the ground that the Claimant performed work outside the limits of his territory and outside the assigned hours, as contained in paragraph 6, Rule 62. In turn, the Carrier argues that a key phrase included therein—required by the Carrier—cannot be disregarded.

In our view, all the words contained in a Rule have applicability. In the instant matter, the Claimant was aware that the Milwaukee Road was obligated to repair signal malfunctions on its property. Under those circumstances, this Claimant could not foist liability on this Carrier unless he was required to perform the work. In fact, the initial letter of the Organization's General Chairman contains the following:

"The broken battery connection was off the Rock Island and in the Milwaukee case and is maintained by the Milwaukee maintainer and the Rock Island man has no business in another Railroad's case."

Under the circumstances prevalent herein, therefore, it is our conclusion that the facts warrant a denial of 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 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1969.

Dissent to Award No. 17172

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The Majority, Carrier Members and Referee, in reaching this erroneous award, has closed its eyes to undisputed and controlling fact.

The Majority turned its decision on a decision that the Claimant was not required to perform the work in dispute relying upon a statement

of principle, not of requirement, made by the Organization's General Chairman. The requirement here controlling was that shown in a letter by the Carrier's Signal Supervisor, the Claimant's superior, stating that:

"If, in the pursuit of restoring his signal system to normal functioning, it became necessary to go beyond what would be considered the 'normal maintenance boundary of his normal maintenance activities' then, this is what he must do to restore his own signals to proper functioning."

Clearly the Carrier required the disputed work of the claimant, and Award No. 17172 is in error.

I therefore dissent.

/s/ W. W. Altus, Jr.
W. W. Altus, Jr.
For Labor Members

June 10, 1969