



Award No. 17181

Docket No. SG-17724

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 violated the current Agreement between The Pacific Electric Railway Company and its employees represented by the Brotherhood of Railroad Signalmen, effective September 1, 1949, including revisions, when it failed and or declined to call the regular assigned Signal Maintainer on March 5, 1967.
- (b) Mr. W. E. Smith be allowed three (3) hours at the time and one-half rate of his assignment, from 4 P.M. to 7 P.M. on March 5, 1967.

[Carrier's File: SIG 148-149]

EMPLOYEES' STATEMENT OF FACTS: Claimant W. E. Smith is regularly assigned as Signal Maintainer on the Watts District with headquarters at Dominguez Yard, Compton, California. Watts Block on the Wilmington Branch is included in his territorial assignment.

It has been the practice to call the Signal Maintainer for trouble on his assigned territory.

At 4:00 P.M. March 5, 1967, signal trouble was reported at Watts Block, and Signal Maintainers having territories which do not adjoin the one in question were called to make repairs. The first maintainer was called by an operator at Los Nietos Yard; the second was called by the first maintainer upon instructions received from an Assistant Signal Supervisor over the phone. They worked until 7:00 P.M. and were paid three (3) hours each at the time and one-half rate.

Inasmuch as Mr. Smith was available but not called for service on his assigned territory—as is indicated by Mrs. Smith's statement in the record—claim on his behalf was entered by the Local Chairman. The claim was for three (3) hours at time and one-half rate, the amount Signal Maintainer Smith would have been paid had he properly been called.

to correct this signal trouble, and was released from this service at 7 P.M." In support of claim it was stated that claimant "... was available and willing to perform the work, his telephone was in good repair, and he should have been called to perform the work" No rule violation was cited; however, it was stated that "It has been the practice for many years to call Signal Maintainers for signal trouble on their assigned territories, both during their regular working hours, and during the overtime hours. For the Company to ignore the assigned employee during the overtime hours, violates the working conditions acquired over the years by the employees, through practices of the Company." This correspondence is reproduced and attached as Carrier's Exhibit "D."

Carrier's Assistant Manager of Personnel acknowledged the appeal on April 6, 1967, and on April 14, 1967, advised "This case will be discussed in conference with you at the first available opportunity." On April 25, 1967, Carrier confirmed conference discussion and advised, as follows:

"Signalman Proft, referred to in your letter, was called for service involved only after Claimant Smith had first been called by the operator at Los Nietos and could not be reached, and Proft was so advised by the operator at the time Proft was called.

"Mr. Proft then called Assistant Signal Supervisor W. E. Easterman and, due to conditions at the time in the Watts area where the trouble occurred, Mr. Proft was authorized to call another signalman, Mr. H. D. Carper, to accompany him.

"Since Mr. Smith, the claimant was called for the service involved and could not be reached, the claim presented is denied."

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

On May 18, 1967, Petitioner's General Chairman, referring to Carrier's denial of April 25, 1967, wrote to Carrier's Assistant Manager of Personnel, taking exception thereto, and stated in part therein as follows:

"During conference on this claim, you were furnished copies of statements from the employee who was called to perform the work on Mr. Smith's assigned territory in preference to Mr. Smith on March 5, 1967, Mr. Frederick L. Proft, and from the wife of claimant Smith, who attested to the fact that Mr. Smith was home, available for call, and Mr. Smith's telephone was in good repair on March 5, at 4 P.M."

This correspondence, together with attached statements referred to therein, is reproduced and attached as Carrier's Exhibit "F."

(Exhibits not reproduced)

OPINION OF BOARD: Claimant, a regularly assigned Signal Maintainer, claims the agreement was violated when Carrier failed to call him for work on his assigned territory due to signal trouble, but instead called another Signal Maintainer to do the repair work.

Claimant alleges that Carrier has always in the past called the Signal Maintainer of the territory where the trouble is located to perform the work, and that Carrier failed to call Claimant on the date in question.

Claimant introduced into evidence a statement from his wife stating that Claimant was at home and available for work at 4:00 P.M. on Sunday,

March 5, 1967 and that Claimant's telephone was in good working order, and that Claimant was not called out to work.

Carrier's sole defense to this claim is that past practice was followed in this instance when Carrier's Los Nietos Operator called Claimant by phone at his home at approximately 3:50 P.M. on said date in question but that no one answered the phone.

Examination of the record before this Board shows that Carrier failed to offer proof from said Los Nietos Operator that he called Claimant at his home by telephone on the date involved in this dispute. Carrier attempts to establish its contention that the Claimant was called by alleging that the Maintainer who performed the work was advised by Carrier's Los Nietos Operator that said operator had called Claimant but that Claimant had not answered his phone.

Thus, it is seen that Carrier failed to adduce proof into the record showing that an attempt had been made to call Claimant prior to calling another maintainer to do the work. Therefore, the claim must 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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1969.