



Award No. 17201

Docket No. SG-17649

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Morris L. Myers, 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 that:

- (a) The Southern Pacific Company violated the current Signalmen's Agreement effective April 1, 1947 (reprinted April 1, 1958, including revisions), when it failed and/or declined to apply Rules 15 and 16, which resulted in the violation of Rule 70, when it called employees other than the regularly assigned employees to perform overtime work on Mr. Radford's assigned signal maintenance territory, and did not call Mr. Radford.
- (b) Mr. V. M. Radford be allowed eight and one-half (8-1/2) hours at the time and one-half rate of his assignment on September 26, 1966.

(Carrier's File: SIG-148-144)

EMPLOYEES' STATEMENT OF FACTS: At 3:00 P.M. September 26, 1966, Signal Maintainer V. M. Radford, whose headquarters are located at Watsonville Junction, was called to help an adjoining maintainer repair a crossing gate at Gilroy.

The repair of the crossing gate was completed at 9:00 A.M. and Mr. Radford inquired at the Gilroy Railroad Station if there was further signal trouble. He was informed there was no further trouble reported and he left to return home.

Signal Maintainer Radford arrived at his home at 10:00 P.M. and was informed by his wife he had been called for trouble. He at once called the railroad operator to determine the location of the trouble and was given to understand the trouble was not on his assigned territory and that his services would not be required.

Upon reporting for duty at the regular time September 27, Mr. Radford learned the trouble had been on his assigned territory; that a signal maintainer from an adjoining territory had been called and in addition, the employees of Signal Gang No. 2 had been called to repair the damage to a crossing gate.

5. By letter dated March 6, 1967 (Carrier's Exhibit "C"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, who denied same by letter dated April 20, 1967 (Carrier's Exhibit "D"), on the basis that:

"Since claimant was not available at time of call at approximately 9:30 P.M., it was proper to call out another signal maintainer in his place, and equally proper for the latter to call forces necessary to make repairs."

Copy of General Chairman's reply to that letter, dated May 17, 1967, is attached as Carrier's Exhibit "D".

(Exhibits not reproduced)

OPINION OF BOARD: The facts in this case are undisputed. They are as follows:

At 3:00 P.M., September 26, 1966, Signal Maintainer V. M. Radford, the Claimant herein, was called to help an adjoining Signal Maintainer repair a crossing gate at Gilroy, California. The repair job was completed at 9:00 P.M., upon which completion Mr. Radford inquired of the Carrier if there were any further signal trouble for which he was needed, and was informed by the Carrier that there was no further trouble reported, whereupon Mr. Radford left to return to his home.

At about 9:30 P.M. while Mr. Radford was enroute to his residence, an automobile struck and demolished a signal at Castroville, California, which location was on Claimant's district. The Carrier called Mr. Radford's home, and upon learning from Mr. Radford's wife that he was not there, then called Mr. A. I. Hartless, another signal maintainer, to replace the Castroville signal. Mr. Radford arrived home about 10:00 P.M. and when he was told by his wife that he had received a call, he immediately telephoned the Carrier and was told by the Carrier that his services would not be required. In the meantime, Mr. Hartless had proceeded to Castroville, had determined that the extent of damages to the Castroville signal required the services of a signal gang, and had called out Signal Foreman Simington, who in turn had called out a signal gang to repair the damage to a crossing gate. It would appear that this signal gang was being called by Mr. Simington at the same time that Mr. Radford made his 10 P.M. call to the Carrier.

The Claimant seeks eight and one-half (8-1/2) hours' pay at time and one-half on the grounds that the Carrier, violated Rule 16 of the Agreement by not permitting him to work on the Castroville signal repair job. Rule 16 reads as follows:

"Rule 16. SUBJECT TO CALL. Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and shall notify the person designated by the Management where they may be called and shall respond promptly when called. When such employees desire to leave their headquarters for a period of time in excess of three (3) hours, they shall notify the person designated by the Management that they will be away, about when they shall return, and when possible, where they may be found. Unless registered absent, regular assigned employees shall be called."

The specific portion of Rule 16 that is alleged to have been violated is the last sentence thereof stating "Unless registered absent, regular assigned employes shall be called." Claimant asserts that he was not registered absent, that he was the regular assigned employe, and that, therefore, the Carrier violated the Agreement.

The Carrier defends the claim on the basis that it fulfilled its contractual responsibility by calling Claimant at 9:30 P.M. and that when it was determined that he was not home, the Carrier had the right under the circumstances that existed to call another signal maintainer.

The Board believes that under the facts of this case the Carrier's defense has merit. There is no indication in the Record that the Carrier knew or was told when the Claimant would arrive home. The only reasonable or responsible course of action left to the Carrier as of the time it found the Claimant not at home was to call another signal maintainer so that the Castroville signal could be repaired as soon as possible. For all the Carrier knew, the Claimant might not have returned to his home for hours, an unreasonable length of time under the circumstances for the Carrier to wait to repair the signal. That the Claimant in fact arrived home at 10 P.M. is something that the Carrier could not anticipate nor rely upon consistent with the need for immediate repair of the signal.

Therefore, the claim will be denied.

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 6th day of June 1969.

Dissent to Award No. 17201

Docket SG-17649

Award No. 17201 reaches an erroneous conclusion and interpretation and relies upon speculation for support.

The Carrier's defense has no merit. The controlling rule is clear and unambiguous; by requiring employees to register absent only if they desire to be away from their headquarters for a period of time in excess of three hours the parties to the Agreement have shown that it was not contemplated that the Carrier should in all instances receive instantaneous response. In this light, the requirement that "Unless registered absent, regular assigned employees shall be called" clearly was not met by making a single phone call to the Claimant's residence before he had had a reasonable time to return there from rendering the Carrier service at a point outside of his assigned district and then immediately calling another employe.

The comments regarding the Carrier's lack of knowledge about the time when the Claimant would reach his residence are pure speculation and dicta and do not support the opinion of the Board. The Carrier apparently thought little of it as a defense, for we have found no mention of it in its submission and rebuttal in this Docket. The effective result therefore is that the award places the Board in the position of making a defense for the Carrier when the Carrier has otherwise inadequately met its burden to defend itself, and the award is tantamount to a rewriting of the parties' solemn agreement.

Award No. 17201 is in error and I dissent.

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

June 10, 1969