



Award Number 17248
Docket Number SG-17632

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John B. Criswell, 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 (Pacific Lines) 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 violation of Rule 70, when it failed to call a regular assigned maintenance employe for the performance of overtime work on October 16, 1966.
- (b) Mr. A. I. Hartless be allowed ten (10) hours at the time and one-half rate of his assignment for October 16, 1966.

(Carrier's File: SIG 148-142.)

EMPLOYEES' STATEMENT OF FACTS: Claimant A. T. Hartless was a regularly assigned Signal Maintainer, with headquarters at Salinas, California. His assigned work days were Monday through Friday with rest days Saturday and Sunday.

Sunday, October 16, 1966, at 3:00 A.M., signal trouble developed at signals 1000 and 1001 on the Watsonville Junction territory.

Regularly assigned Signal Maintainer on the Watsonville Junction Territory, V. M. Radford, was properly signed off duty for the weekend, October 15, and 16, 1966.

Carrier called Signal Maintainer J. Lucas, Branch Line Maintainer at Watsonville Junction, who declined the call due to illness. Carrier then called Leading Signaller J. G. Choate, who was not a maintenance employe, to perform the overtime work.

Inasmuch as Claimant Hartless was a regularly assigned maintainer and the work involved is reserved to employes assigned to regular maintenance duties, claim was initiated in his behalf, subsequently handled in the usual and proper manner on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement. Pertinent exchange of correspondence on the property is attached hereto as Brotherhood's Exhibits Nos. 1 through 6.

Copy of General Chairman's reply to that letter, dated March 27, 1967, is attached as Carrier's Exhibit "E".

(Exhibits not reproduced)

OPINION OF BOARD: Claimant Hartless was a regularly assigned Signal Maintainer and contends that he should have been called to work on faulty signals on October 16, 1966, though not the regularly assigned maintainer on that territory.

When the trouble developed, Carrier called regularly assigned Signal Maintainer V. M. Radford, who had signed off duty for the weekend.

Carrier next called another signal maintainer, who declined the call due to illness.

Leading Signman J. G. Choate, not a maintenance employe, was then called and performed the work.

Carrier claims that under the language of Rule 16 it was not obligated to use Claimant Hartless and could use an employe not so regularly assigned.

While there are similar rules with other Carriers which by their specific language might allow this procedure, it is not the situation here.

Rule 16 of the Agreement under which this case comes to us says:

" . . . Unless registered absent, regular assigned employes shall be called."

In drafting this rule, the parties might have chosen to limit the Carrier's obligation to a single assignee, as was done in the agreement between the Brotherhood and the Chicago, Rock Island and Pacific Railroad in its Rule 19, which reads:

" . . . Unless registered absent, the regular assignee will be called."

We can not rewrite the agreement, and must find that Carrier was in violation of Rule 16 when it used an employe assigned other than to signal maintenance work when Claimant was holding himself available for work as provided by the rule.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1969.

Received Jul 14 1969, Third Division

CARRIER MEMBERS' DISSENT TO AWARD 17248 (DOCKET SG-17632)

(Referee Criswell)

We respectfully submit that the award fails to come to grips with the only real issue, namely, whether this Claimant was a "regularly assigned employee" for the involved work within the meaning of the Call Rule. The award places great emphasis on the fact that the Call Rule is worded in the plural rather than the singular. This fact, standing alone, obviously proves nothing more than that there may be more than one regularly assigned employee. Both parties agree to the obvious fact that under this rule there may be more than one employee "regularly assigned".

Carrier takes the entirely logical position that the term "regularly assigned employees" means employees assigned to the particular work, namely, those assigned to do what is generally done by the maintainers within the assigned district. The Employees also take the position that this is the primary meaning of the word, for they specifically contend that assigned maintainers in the particular district have first call under the rule. The rule itself provides for no secondary entitlement, but the Employees would have us attach a secondary meaning to the term, namely, if the persons regularly assigned to the work are not available then call must go to employees not assigned to the particular district or work but assigned as maintainers elsewhere in preference to signalmen who are assigned to the particular district. They cite no authority whatever for the contention that this secondary meaning should be attached, and for this Board to adopt that meaning without evidence to support it would be to attempt to amend the agreement.

This Board was confronted with a rule containing similar provisions in Award 12554 involving signalmen on the Chicago, Rock Island and Pacific. In that case, as here, this same Petitioner alleged that because of the provisions for calling the regular maintainers, the carrier was precluded from calling men in other classifications. There, as here, trouble developed on the district of a maintainer who was not available. Instead of calling the maintainer of an adjoining district, the carrier there called a signal testman. The Petitioner's contention that this constituted a violation of the agreement was denied.

In this award an attempt is made to distinguish the Rock Island case on the premise that the Call Rule in that case used the singular, stating that "the regular assignee will be called"; whereas the rule in the instant case uses the plural, stating that "regularly assigned employees shall be

called". This distinction in the wording of the rules is obviously explained by the fact that the controlling agreement in the instant case provides for the assignment of more than one signal maintainer to a single district. Provision is made for leading signal maintainers who supervise maintainers, and Carrier has districts on which more than one maintainer is assigned to the work. Hence, good grammar required the use of the plural instead of the singular in this agreement. The ultimate principle involved is precisely the same as in the Rock Island case.

/s/ G. L. NAYLOR

/s/ R. E. BLACK

/s/ W. B. JONES

/s/ P. C. CARTER

/s/ G. C. WHITE