



Award Number 17430

Docket Number SG-17841

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James R. Jones, 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 13, 35 and 36, which resulted in the violation of Rule 70, when it assigned employees of the Los Angeles Division seniority district to perform signal repair work at Signal 3206, on the Coast Division seniority district, on December 24, 1966.
- (b) Mr. W. J. Kendall, and Mr. R. W. Warren, be allowed sixteen (16) hours each at the time and one half rates of their assignments, and eight (8) hours each at the double time rate of their assignments, for the hours 5:00 A.M. on December 24, 1966 to 5:00 A.M. on December 25, 1966.

(Carrier's File: SIG 148-153)

EMPLOYEES' STATEMENT OF FACTS: Claimants, Foreman W. J. Kendall and Signalman R. W. Warren were members of Signal Gang No. 2 of the Coast Division seniority district, working Monday through Friday, with Saturday and Sunday as rest days.

Saturday, December 24, 1966, signal 3206 in the vicinity of Surf, California on the seniority district of Claimants was damaged.

Carrier called and used employees of the Los Angeles Division seniority district including a signal foreman, from 5:00 A.M. December 24 to 5:00 A.M. December 25, 1966.

An employee of the Coast Division seniority district and member of gang No. 2, Signalman W. J. Paul was called and used the same number of hours as were the employees of the Los Angeles division seniority district.

Claimant R. W. Warren who was a member of the same gang as was Mr. Paul, signal gang No. 2, is senior in seniority in the class involved to Mr. Paul, was available but was not given the opportunity to work.

A foreman and signalman from another seniority district were called and used on the Coast division seniority district although Claimants were

hours at the applicable time and one-half rate and 3 hours at the double time rate of pay.

4. Semi-monthly time roll, Form CS-201-E, (Carrier's Exhibit "B") signed by Claimant Kendall indicated he had claimed 24 hours overtime from 5:00 A.M., December 24, to 5:00 A.M., December 25, 1966, for himself and for Claimant Warren, adding the following explanation therefor:

"Claiming time acct LA Div foreman working on Coast Dist."

By letters dated February 24, 1967 (Carrier's Exhibit "C"), Carrier's Los Angeles Division Superintendent notified Claimants Kendall and Warren, respectively, that their claims were denied.

By letter dated March 14, 1967 (Carrier's Exhibit "D"), Petitioner's Local Chairman submitted claim to Carrier's Division Superintendent in behalf of Claimants Kendall and Warren for 24 hours commencing 5:00 A.M., December 24, 1966. By letter dated March 31, 1967 (Carrier's Exhibit "E"), Carrier's Superintendent denied the claim. By letter dated April 20, 1967 (Carrier's Exhibit "F"), Petitioner's Local Chairman gave notice that the claim would be appealed.

By letter dated May 15, 1967 (Carrier's Exhibit "G"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel and by letter dated July 27, 1967 (Carrier's Exhibit "H"), the latter denied the claim.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant W. J. Kendall was foreman and Claimant R. W. Warren was a signalman on Signal Gang No. 2 of the Coast Division Seniority when, on one of their rest days, Carrier called a foreman and signalmen from a different seniority district to perform work on the Coast Division Seniority District.

The claim herein was filed and during handling on the property the sole defense asserted by Carrier was that:

"Investigation develops that Signal Foreman W. J. Kendall, Signal Gang No. 2, was in fact called for this service and that Kendall had declined to accept call, thereby also declining responsibility for proper calling of Signalmen Warren and Paul, Signalmen assigned to his gang."

The record does not establish that Carrier adduced any evidence on the property to support the contention that Foreman Kendall declined a call; it does establish that the Employees submitted a statement of Foreman Kendall indicating that he did not decline a call and held himself available for service.

In this posture of the record, we must sustain the 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.

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 11th day of September 1969.