



Award Number 17583

Docket Number SG-17196

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerry L. Goodman, 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 T. F. Maske for seven and six-twelfths (7-6/12) hours' pay at three (3) times his straight time rate under Rules 16 and 18, and Rule 17, Section 1(c) and (1), account not being called in connection with a broken rail at Mile Post 405-Pole 20 on December 25, 1965, in order to make necessary repairs to the bonding.

(Carrier's File: L-130-366)

EMPLOYEES' STATEMENT OF FACTS: Claimant T. F. Maske is regularly assigned as a Signal Maintainer; his headquarters is Rexford, Kansas, and one end of his territory is Mile Post 396 at Dresden.

On December 25, 1965, he gave Dispatcher J. J. Willke his phone number at Dresden and told the dispatcher he would be there all Christmas Day. In complying with Rule 19, he did this so he could be located for work on his and another territory on which the regular assignee had registered absent and was not available for emergency work.

Mr. Maske knew the Goodland Maintainer was registered absent and on other such occasions when trouble occurred on the territory he had been called. Furthermore, he had given the phone number to Carrier previously, and it is on file in Des Moines.

On December 25 there were broken rails on the Goodland territory at Mile Post 405 Pole 20 and Mile Post 407 Pole 20. No Signal Maintainer was called to perform the necessary bonding in connection with the replacement of the broken rails. A Section Foreman did the work instead. He worked on the first rail from 7:00 A.M. until 12:00 noon and on the second one from 1:00 P.M. until 4:00 P.M.—a total of seven and one-half (7 1/2) hours on that day.

Inasmuch as Claimant Maske was available but not called for the emergency work in connection with the broken rails, claim on his behalf was entered by General Chairman R. A. Watkins. The claim was for 7 6/12 hours' pay at three times the straight time rate of pay, the amount he should have been paid if he had properly been called. It was denied by the

Signal & Communications Supervisor and subsequently appealed by the General Chairman.

The claim was handled in the usual and proper manner by the Brotherhood on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement. Pertinent correspondence exchanged on the property has been reproduced and is attached hereto, identified as Brotherhood's Exhibit Nos. 1 through 10. Exhibit No. 10 is an affidavit by Claimant.

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

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS:

1. There is a copy of an Agreement in effect between the Chicago, Rock Island and Pacific Railroad Company, hereinafter referred to as the Carrier, and certain of its employees represented by the Brotherhood of Railroad Signalmen, hereinafter referred to as the Brotherhood, bearing an effective date of July 1, 1952 on file with your Board which by this reference is made a part of this submission.

2. The instant claim was filed in behalf of Signal Maintainer T. F. Maske, Rexford, Kansas, for 7-6/12 hours at three times his straight time rate (one and one-half times regular rate under holiday and rest day rules) on December 25, 1965, account section forces allegedly repairing two broken rails at Mile Post 405, Pole 20, and Mile Post 407 Pole 20 on adjoining signal maintainer's territory and claimant not called for such service.

3. The basis for Carrier's declination of this claim as summarized in Carrier's letter of December 29, 1966 to General Chairman R. A. Watkins is that:

"... this claim was not proper inasmuch as (1) the work performed in this case was not on claimant's territory, (2) the overtime on overtime rate claimed was not proper or required under the rules, and (3) the record very clearly indicates that Carrier made an attempt to contact claimant."

4. 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.

5. 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.

OPINION OF BOARD: On December 25, 1965, Claimant, a regularly assigned Signal Maintainer, gave Carrier's dispatcher his home phone number and advised him he would be there all day since he knew the Signal Maintainer on the adjoining territory would not be available for

call and that Carrier might therefore be looking for him to perform service on that territory as well as his own.

Nevertheless, on the same date, when certain bonding work was required to be done on the adjoining territory, Carrier permitted a Section Foreman to perform it. Claimant now seeks compensation for this work at three times his straight time rate on the theory that he should have been called to perform this work occurring on his restday which was also a holiday.

Carrier initially defends its conduct in permitting the Section Foreman to perform this work on the grounds that it attempted to call Claimant but could not locate him.

However, the only evidence offered in support of this defense is a statement by the Section Foreman. And when weighed against Claimant's sworn affidavit that he gave the dispatcher his home phone number and advised him he would be there all day because he knew the Signal Maintainer on the adjoining territory was unavailable for call and that Carrier might in accordance with common practice be looking for him to perform service on that territory, the unsworn, hearsay statement of the Section Foreman to the effect that the dispatcher told him he "... could not locate a Signal Man ..." is insufficient to prove that the dispatcher attempted to locate Claimant but could not because the latter was unavailable.

Carrier next defends by contending Claimant had no right to perform this work since it occurred on a territory other than his own. The work in question undoubtedly accrues to the members of the Organization under the Scope Rule of their Agreement. Consequently, while Carrier may have had the right to call other Organization members assigned to the territory where the work occurred to perform it, Carrier certainly did not have the right to permit a non-member of the Organization to perform Organization work when a member was available as in this case.

The claim is, therefore, 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 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 25th day of November 1969.