

Award No. 18302
Docket No. SG-18688

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Melvin L. Rosenbloom, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Long Island Rail Road.

Case No. SG-5-69 — Claim on behalf of Mr. A. Licata from 10:00 P. M., February 7, 1969, to 1:30 A. M., February 8, 1969, because he was instructed to go home while junior employe stayed and worked overtime.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties to this dispute bearing an effective date of May 1, 1954, which is by reference made a part of the record in this dispute. Of particular pertinence in this dispute are Rules 32 and 36, reading:

"RULE 32.

The following groups of employees shall each constitute a separate seniority class:

- (a) Foreman
- (b) Assistant Foreman
(Groups (a) and (b) will sometimes hereinafter be referred to as the 'Foreman Class')
- (c) Leading Maintainer, Leading Signalmen
- (d) Signal Maintainers, Telegraph and Signal Maintainers, Telegraph and Telephone Maintainers, Signalmen.
- (e) Assistant Signalmen
- (f) Helpers."

"RULE 36.

The Long Island Rail Road shall constitute a single seniority district."

denying his appeal. A copy of that letter is attached and identified as "Carrier's Exhibit No. 6."

Under date of January 27, 1970, the President of the Brotherhood of Railroad Signalmen wrote your Honorable Board, stating intent to submit an ex parte submission in connection with this unresolved dispute. A copy of that letter is on file with your Board.

II

Briefly stated, the facts of this dispute are as follows:

On February 7, 1969, after having completed their regular tour of duty (in other words, on overtime), a four-man crew was installing temporary wiring for the purpose of restoring communications to the Yard A (L. I. City) hump track shanty.

These employees completed that assignment and W. J. Moore, Signalman of the crew, called the Assistant Foreman then on duty at the signal desk in Jamaica to report the work completed. Upon learning that the assignment at Yard A (Long Island City) had been completed E. G. Allen, the Assistant Foreman, instructed Signalman Moore to repair another troubled line. Since there was need for but one man to handle the additional task, Assistant Foreman Allen instructed Signalman Moore to tell the other three men to return to their headquarters and be relieved from duty.

Claimant Licata, the senior of the four employees, on learning of the further assignment of Signalman Moore, made no protest or objection to Signalman Moore's further assignment at that time. Instead, he stood mute until the claim, subject of this dispute, was initially filed with the Carrier.

III

The controlling Agreement, at the time this dispute arose, is silent on the question of distribution of overtime. It is in this posture that this dispute comes to your Board for adjudication.

(Exhibits not reproduced.)

OPINION OF BOARD: On February 7, 1969, a four man crew consisting of Claimant Licata, Signalman Moore and two others, performed an overtime assignment involving the installation of temporary wiring and, upon completion, Moore telephoned the assistant foreman to so report. The assistant foreman told Moore to repair another troubled line and to instruct the three other men to return to headquarters and be relieved of duty. Claimant Licata, being senior to Moore, asserts that the additional overtime assignment to Moore was made improperly and should have been offered to Licata by virtue of his greater seniority.

In order to sustain the instant claim, the Board must find that there is a controlling agreement, either express or implied, between the parties regulating the distribution of overtime. The written contract between the parties contains a comprehensive and broad seniority provision. In addition that contract specifies in detail the procedures to which seniority applies,

such as reduction in force, recall to work, promotions, filling positions, etc. The contract has no provision relating to the distribution of overtime and does not specifically provide that the principle of seniority shall govern the selection of employees to perform overtime assignments.

The Signalmen argue, nevertheless, that the absence of an express provision in the contract covering the situation does not preclude our finding that the general seniority rules are broad enough to embrace their claim. They contend that the principle of seniority is accorded such importance by the contract that it may be reasonably concluded that the parties intended seniority to govern the determination of preference to overtime work.

While the Board is often required to look beyond the express terms of a contract in interpreting its application to a specific situation, it may do so only for the purpose of ascertaining the intention of the parties regarding the extent of their agreement. In the instant case, we find that it is clear the parties had never reached agreement on the question of the application of the seniority provisions of the contract to overtime distribution prior to the relevant dates herein.

Even after the occurrence of the events out of which this claim arises, representatives of the Signalmen were criticizing the Carrier for not having formulated and effectuated a consistently applied policy concerning the distribution of overtime. At a meeting held more than two months after the disputed assignment to Moore, the Carrier's Vice President of Labor Relations agreed with representatives of the Signalmen to establish a "fair and equitable means of calling out employees on overtime", and instructed his staff to follow through on this subject. Thereafter, on October 9, 1969, the parties entered into a limited agreement which established a method for the distribution of overtime.

Since the parties felt it necessary to execute an agreement pertaining to overtime distribution on October 9, 1969, it follows that no agreement on the subject existed prior to that time. In the absence of such an agreement, no violation can be claimed.

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 not violated.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of November 1970.

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