



Award No. 18369
Docket No. SG-18527

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
SEABOARD COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad Company:

(a) Messrs. F. H. Clay and J. W. Neisler be paid for seven (7) hours each at their respective overtime rates of pay, in addition to any compensation they have already received for February 5, 1968, for overtime hours worked that date away from their assigned territory and headquarters.

(b) Messrs. H. B. Miles and M. C. Barber be paid for seven (7) hours each at their respective overtime rates of pay, in addition to any compensation they have already received for February 5, 1968, for Carrier's using employees their junior, Messrs. F. H. Clay and J. W. Neisler, to perform overtime work in connection with installation of switch machine at Jacksonville, Florida.

(Carrier's File: 15-16)

EMPLOYEES' STATEMENT OF FACTS: As is indicated by the correspondence attached as our Exhibits Nos. 1 through 7, this dispute was handled in the usual and proper manner on the property by the Brotherhood, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement.

There is an agreement in effect between the parties to the dispute, bearing an effective date of July 1, 1967, as amended, which is by reference thereto made a part of the record in this dispute. Particularly pertinent and controlling rules of that Agreement are:

"RULE 16.

(c) When overtime service is required of a part of a gang, the senior qualified employees in the class involved shall have preference to such overtime if they so desire."

and does not lend any support to their claim or the claim of Messrs. Miles and Barber. Note they stated they were instructed by Foreman Johnson 'to deliver a new switch machine to Jacksonville, Fla.' This confirms the factual statement in Mr. DePriest's letter of April 18, 1968, as to their being instructed to deliver the replacement switch to Jacksonville—they were not instructed to wait and install it. Note their further statement that when they reported to Supervisor's office at Jacksonville 'the two Maintainers were out, and we waited until around 2:00 P.M. for their return.' This confirms the fact that they were not instructed to install the machine; that they could have returned to Ocala during regular working hours; that they were not instructed to install the switch machine—it would be most unusual for them to do so (they had never installed one) and such installation would be Maintainer's work; that they waited at Jacksonville for the Maintainers and then accompanied them to the installation location at Stockton Street of their own accord and volition, as stated by Mr. DePriest. As to their statement that the replacement machine brought by them from Ocala 'was found to be improperly wired', they failed to state the fact that such was due to their not doing a complete job in converting the machine at Ocala from left hand to right hand operation (the wiring to the machine motor had not been changed when converted). Their statement shows, in addition to paying Maintainers Harter and Shearin overtime, it was necessary for the Supervisor to come out and check the machine. None of the extra work would have been necessary if they had properly performed the work on the machine at Ocala.

The record clearly establishes that Messrs. Clay and Neisler were instructed to deliver the replacement machine to Jacksonville, and they were not instructed to stay at Jacksonville and install the machine or assist in its installation. Their failure to get back to Ocala by 5:00 P.M., February 5th, was due to their own actions.

As the record shows, no overtime was contemplated at the time these men were sent to Jacksonville with the switch machine, and they were not instructed to install or help install the machine at Jacksonville. They could not create an overtime situation by their own actions and have a valid claim for overtime pay. As set out in the record, it was proper to have them deliver the switch machine and they are monthly rated men whose monthly rate is 'compensation for all service rendered.' There can be no question about the meaning of such provision, as conclusively shown by the Third Division Awards cited in our letter of June 6, 1968, particularly Award 15172.

Therefore, I can only reiterate that there is no merit to their claim.

Your assumption as to the application of the six months extension of time granted is correct."

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants Clay and Neisler were instructed to perform certain work on a switch machine at Ocala, Florida, and deliver it to Jacksonville, Florida—a movement that Carrier contemplated could be done within the eight-hour day.

Claimants, however, stayed at Ocala for several hours and into an over-time situation because of waiting, rewiring and installing the machine. Carrier contends it did not instruct Claimants to do the additional work and to remain beyond delivering the machine.

This Board has many times held that voluntary performance absent direction or authority cannot be used for basis of claim. And, we so find in this case.

It is the contention of the Organization that the claim should be paid under a memorandum of agreement dated June 6, 1967. We do not know how it might be construed in other cases, but base our decision on the Organization's failure to convince this Board the men acted under proper authority when they continued to work the overtime.

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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1971.

LABOR MEMBER'S DISSENT TO AWARD 18369, DOCKET SG-18527

The Majority, Carrier Members and Referee, have in Award 18369 upheld the Carrier in its cause to escape both the letter and the intent of its Agreement with its employees and in its imposition upon them.

The Majority premise their Award on the holding that the Claimants performed voluntary labor—this in acceptance of the Carrier's statement that it did not instruct Claimants to do additional work and to remain beyond delivering the subject switch machine. However, the facts as set out by the Carrier in its Ex Parte Submission do not support the Majority's holding. The Carrier states that “* * * the Foreman instructed them to so convert

the available switch machine to right hand operation and then deliver it to Jacksonville * * * When installed the machine would not properly function * * *." It is not only customary, but indeed mandatory in railroad signaling that all work be tested after being performed to determine if it has been properly done and that the apparatus properly functions. It is apparent that such tests could not be made (because obviously they were not made) at the Carrier's shop in Ocala, but had to be made in the field. It is, therefore, also apparent that the Carrier's statement that " * * * they remained at Jacksonville of their own volition to accompany the Maintainers and observe their installation of the switch machine * * *" is designed to mislead.

Finally, it is shown that the Carrier's Supervisor knew of the Claimants' presence and in fact was at the work scene. Even if we were to accept the Carrier's statement that the Claimants were not required to remain in Jacksonville, the Majority's Award upholds the Supervisor's "laying behind a log", entrapping the Claimants into performing work for which the Carrier would unconscionably refuse to pay them.

Award 18369 is in error; I, therefore, dissent.

W. W. Altus, Jr.
Labor Member