



Award No. 18601
Docket No. SG-18692

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
SOUTHERN PACIFIC TRANSPORTATION 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 (Pacific Lines) violated the agreement between the company and the employes of the Signal Department represented by the Brotherhood of Railway Signalmen, effective April 1, 1947 (reprinted April 1, 1958 including revisions), and particularly Rules 2(a) and 70.

(b) Mr. R. P. Smick be compensated for a call of two hours and forty minutes at his overtime rate for each of the following dates, December 13, 15, 24 and 25, 1968, and January 5, 1969, a total of five calls.

(Carrier's File: SIG 22-28)

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties to this dispute bearing an effective date of April 1, 1947 (Reprinted April 1, 1958 including revisions) which is by reference made a part of the record in this dispute. Of particular pertinence here are Agreement Rules 2(a) and 70:

"RULE 2. (a) SIGNAL FOREMAN. An employe who is assigned to the duties of supervising the work of other employes, and who is not required to regularly perform the work over which he has supervision."

"RULE 70. LOSS OF EARNINGS. An employe covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement shall be reimbursed for such loss."

On certain dates set out in the record of this dispute the carrier called out the members of its Signal Gang No. 25 except for the claimant, its Foreman. The Carrier's Rules and regulations for the Maintenance of Way and Structures contains a Rule numbered M 621 which provides that:

to claimant Smick was used, and claim was properly denied by Division Chairman on this basis.

In appeal to this office, no reference is made to Rule 13, and basis for claim has been changed (more than 60 days from date of occurrence for dates December 25 1968 and prior thereto so as to rely on finding in Award No. 4, PL Board No. 15."

By letter dated April 10, 1969 (Carrier's Exhibit "F"), Petitioner's General Chairman advised that Carrier's reasons for denying the claim were not accepted.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant seeks compensation for calls of two hours and forty minutes at his overtime rate for December 13, 15, 24 and 25, 1968, and January 5, 1969, a total of five calls. On the above dates, Carrier called out members of Signal Gang No. 25, except Claimant, the gang foreman, which members worked overtime. The Organization contends Claimant should have been called to work with the members of his gang, and that he should be compensated the overtime as a result of not being called.

In recent Award No. 18580, involving the identical parties, issues and Agreement, this Board held:

"It is well established by prior awards of this Board that unless specifically provided in the Agreement, Carrier has the sole and exclusive right to determine when and under what circumstances a foreman is assigned to supervise a group of employees. The current Agreement applicable here is wanting in said contractual provision. No where does the Agreement require the service of a foreman in all circumstances. Nor can the Scope Rule be relied on to give Claimant the right to personal supervision of his gang in all circumstances. In this instance, Carrier exercised its prerogative in determining the amount of supervision required. The Claim is therefore denied."

We do not regard that decision as palpably in error, and therefore find the reasoning there applicable to the case at bar.

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1971.

Dissent to Award 18601, Docket SG-18692

The author of the Majority's award cites as precedent Award 18580 which was also authored by him. In so doing he has only compounded his earlier error.

Award 18601, like 18580, is in error and we, therefore, dissent.

W. W. Altus, Jr.
W. W. Altus, Jr.
Labor Member