

Award No. 18706
Docket No. SG-19061

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Edgett, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

PENN CENTRAL TRANSPORTATION COMPANY
NORTHEASTERN REGION (Springfield Division)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former Boston and Albany Railroad:

On behalf of R. J. Tarte for overtime pay for work performed by a junior employe, R. J. Tomasetti, as follows:

September 6, 1969 - signal 42.31
September 7, 1969 - signal 50.12
September 8, 1969 - signal 51.32

[Carrier's File: 114-B (SG69.20)]

EMPLOYEES' STATEMENT OF FACTS: Claimant R. J. Tarte is a signal maintenance employe assigned to a specific territory. On September 6, 7 and 8, 1969, Carrier called a signal employe junior to Mr. Tarte to perform signal work on Mr. Tarte's territory.

Under date of September 10, 1969, Mr. Tarte, acting in his capacity as General Chairman, initiated a claim on behalf of R. J. Tarte for overtime pay for all time worked by the junior employe (R. J. Tomasetti) on Tarte's territory. As indicated by correspondence attached hereto and identified as Brotherhood's Exhibits Nos. 1 through 10, this dispute has been handled to a conclusion on the property, up to and including conference discussion with the highest officer of the Carrier designated to handle such disputes, without receiving satisfactory settlement.

There is an agreement in effect between the parties to this dispute, bearing an effective date of April 1, 1952, as amended, which is by reference made a part of the record in this dispute. The rule cited during the handling on the property, No. 20 (Seniority), is quoted here for ready reference:

"Rule 20. Seniority.

(a) The seniority of employes in the Signal Department as shown on the present seniority rosters is recognized as the established seniority date of the employes.

(b) A new employe will not commence to accumulate seniority until he has had sixty (60) days continuous service with the carrier.

(c) Seniority rights of employes will be restricted to the territory over which one Signal Supervisor has jurisdiction."

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: There is on file with this Division an Agreement governing rules and rates of pay applicable to employes represented by the Brotherhood of Railroad Signalmen on the former Boston and Albany Railroad (now known as the Springfield Division of the Northeastern Region of the Penn Central Transportation Company), effective April 1, 1952, which, by this reference, is made a part of Carrier's submission.

On each of the three dates in question -- Saturday, Sunday and Monday, September 6, 7 and 8, 1969 (the Labor Day weekend), a Signal Maintainer was required on Section #2. Mr. Tarte was the senior Signal Maintainer on Section #2. On each date, Leading Signal Maintainer R. F. Higgins telephoned Claimant's home in an endeavor to assign him the work in question; however, the telephone calls were not answered. Mr. Higgins then proceeded to call R. J. Tomasetti, the next available man junior to Claimant.

On September 10, 1969, Mr. Tarte filed claim with his Signal Supervisor, D. M. O'Brien, for the time worked by Mr. Tomasetti on the dates in question because he, Mr. Tarte, was senior and allegedly not called in lieu of Mr. Tomasetti. The claim was denied by Mr. O'Brien on September 17, 1969. A copy of the denial letter is attached as Exhibit A. The denial was supported by a handwritten letter from Mr. Higgins who actually made the calls in question, dated September 16, 1969, of which a copy is attached as Exhibit B, which shows that Claimant was, in fact, called in turn.

The claim has been properly denied and progressed on the property in the usual manner in accordance with the grievance procedure in applicable agreement provisions up to and including the Superintendent, Labor Relations, who is the highest appeals officer on this Region of the Carrier designated to handle claims for compensation alleged to be due. Failing to reach a mutually satisfactory settlement, the Organization has progressed the claim in this case to this Board for final adjudication.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim must be dismissed because of a failure of proof that claimant was at home to receive a call for service. An affidavit offered by claimant after the claim had been processed on the property does not constitute evidence in the case because it was filed too late.

Prior to filing the affidavit claimant had asserted that he had not been called and that he was available. Such statements, however, do not constitute evidence with sufficient probative value to support the claim. In the absence of such proof the claim cannot be granted by the Board.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 31, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1971.