

Award No. 18790
Docket No. SG-19183

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
DELAWARE AND HUDSON RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Delaware and Hudson Railway Company:

On behalf of Mr. D. H. Silvernail for 2 hours and 40 minutes at overtime rate account not called March 29, 1969.

(Case 1.69 Signalmen)

EMPLOYES' STATEMENT OF FACTS: The question before the Board in this case involves a rather simple issue: Does seniority mean anything in the assignment of overtime work, especially when all things are approximately equal as to time, to the distance and nature of the work to be performed?

On March 29, 1969, signal trouble occurred outside regular working hours on the signal maintenance territory assigned to the Signal Maintainer headquartered at Oneonta, New York. The Oneonta Signal Maintainer was unavailable for duty. Two adjoining signal maintainers, Messrs. D. H. Silvernail and Ward Loucks, were available. Their respective seniority dates in the maintainer's class are 2-5-48 and 3-12-56.

Though these two adjoining signal maintainers report to different headquarters at approximately equal distances from the point of signal trouble involved herein, and Mr. Silvernail has some 12 years' more seniority in the maintainer's class than Mr. Loucks, Carrier called the latter.

Under date of April 23, 1969, the Brotherhood's General Chairman initiated a claim on behalf of Mr. Silvernail for 2 hours and 40 minutes time and a half pay account being denied the right to perform this overtime work. It was subsequently 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 a satisfactory settlement. Correspondence exchanged on the property is attached hereto as Brotherhood's Exhibits Nos. 1 through 6.

There is an agreement between the parties to this dispute bearing an effective date of September 1, 1947, which, as amended, is by reference thereto made a part of the record herein.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: At 2230 hours, March 29, 1969, it was necessary to call a signal maintainer to locate the source of a malfunction in the signal system which was giving the train dispatcher a false indication of track occupancy in the vicinity of RB Cabin. The train dispatcher called the telegraph operator on duty at FA Tower, Oneonta, and requested that a signal maintainer be dispatched to RB Cabin to locate and correct, if possible, the trouble.

Signal Maintainer Loucks responded to the call. On his way to RB Cabin he crossed the tracks at Otego and discovered that the flashing lights at the crossing were operating with no train in the area. Upon investigation, he found that a broken rail two rail lengths from the crossing was making and breaking contact, which prevented the TCS machine in the dispatchers' office from operating properly, giving the dispatcher a false indication that the track was occupied in the vicinity of RB Cabin. Mr. Loucks corrected the difficulty by 0030 hours, March 30, 1969.

The Organization alleges that rules of agreement were violated in this emergency when the carrier called a signal maintainer who was junior to claimant. The trouble occurred in an area assigned to Signal Gang No. 24 and the carrier would ordinarily have called Signal Maintainer Frohrib inasmuch as RB Cabin was within the territorial limits of his assignment; however, Mr. Frohrib had reported off duty at the time in question (Rule 19) and carrier was required to FA Tower, Oneonta, called Signal Maintainer Loucks whose headquarters were at Oneonta and whose territory adjoined that of Mr. Frohrib on the north. Mr. Loucks accepted the call and corrected the trouble. The Organization has progressed claim for a call for claimant whose headquarters were at Sidney, N. Y. and whose territory abuts that assigned to Mr. Frohrib on the south. Claim is predicated solely on the fact that Mr. Silvernail is senior to Mr. Loucks; and has been denied at all stages of appeal on the property, carrier's final decision reading:

"Carrier's Statement of Facts: Account Signal Maintainer Frohrib unavailable for emergency call to locate T.C.S. trouble at RB Cabin on his section on March 29, 1969, Signal Maintainer Loucks was called.

Decision: Claim is denied account the facts submitted do not support the claim under any agreement rule or practice."

OPINION OF BOARD: This is a claim based on the Carrier's alleged violation of the agreement in failing to call Claimant to perform overtime work which right to work is based on seniority.

Nowhere during the handling on the property was a rule involving the assignment of overtime cited. Rules 60(a) and 19 which were cited on the property are not applicable. Further, there were no rules at all cited in the submission to this Board. It is the function of the Board to interpret and apply the agreements between the parties. This we cannot do without specific citation of the rules alleged to be violated.

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 Employes involved in this dispute are respectively Carrier and Employes 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 22nd day of October 1971.