

NATIONAL RAILROAD ~~ADJUSTMENT~~ BOARD

THIRD DIVISION

Award Number 19943  
Docket Number **SG-19678**

Irving T. Bergman, 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 Transportation Company that:

(a) The Southern Pacific Transportation Company violated the current Signalmen's Agreement effective April 1, 1947 (including revisions) and particularly Rule 15 which resulted in violation of Rule 70.

(b) Mr. Kennett be reimbursed the amount of \$15.44 payment for a call of two hours and forty minutes at his time and one-half rate which was paid to Mr. Kennett in his earnings for first period July 1970, later deducted from his second period August earnings. (Carrier's File: SIC 22-31)

OPINION OF BOARD: Claimant was regularly assigned as Signal Maintainer with hours from **7:30** A.M. to 4:00 P.M. Because of an impending strike to **commence** at 6:00 A.M. on the morning in question, claimant was called at **4:40** A.M. and directed to report at **5:45** A.M. Claimant reported at **6:45** A.M., after the picket line was set up. He did not **cross** the picket Line.

According to Brotherhood's Exhibit No. 3, claimant's handwritten signed statement, he did not consider that there **was** an emergency and, "**---** could see no reason **to** be disturbed." He waited **until** 9:00 A.M., "**---ex-**pecting pickets to be removed by a court order. This did not happen and I then returned home."

The Organization has referred to Award 18585, in which a claim was sustained when the Carrier called the claimant and twenty minutes later cancelled the call. The Organization in its rebuttal argued that claimant received a call and responded to it; that the precise time that he reported is not at issue.

Claimant had submitted an overtime claim for call, "account of strike", which was paid. Carrier later recovered the payment on the ground that payment had been made in error.

The Carrier has rejected the claim on the ground that claimant did not respond to the call as directed. He took it upon himself to judge the need for the call and voluntarily **elected** to report at a time of his own choosing. Prior Awards submitted to support this position are: Third Division No. 4112, 18233, 10520, 11102.

We agree with the Carrier's position. **Prior** Award 18585, submitted by the Organization may be distinguished from this case. It **may** be assumed that in the prior case, the claimant was ready and willing to report as directed and would have done so if the call had not been cancelled. In the present case the **employee**, by his own statement, deliberately chose to do **as** he saw fit. He did not respond to the call as directed. By arriving one hour later, he showed complete indifference to orders. Anyone familiar with picket Line situations may assume that claimant intended to arrive after the picket Line was established so that he would not cross it and thus be unavailable to assist the Carrier during the strike; thereby indicating his sympathy for the union on strike. If this was not his intention and he believed that the picket line would be removed, he should not be rewarded for guessing wrong. In any event, he did not comply with the call.

A comparable principle was involved in Award No. 4 of Public Law Board No. **358** which involved **U T U** and this Carrier. In that case, claimants ignored the Carrier's directions. The Findings stated: "These claimants Literally dragged their feet in an attempt to set up a penalty claim. It would be unconscionable for any self-respecting carrier or Board to reward such conduct."

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A. W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1973.