

NATIONAL RAILROAD ~~ADJUSTMENT~~ BOARD

THIRD DIVISION

Award Number 1999,
Docket Number SG-19676

Irving T. Bergman, Referee

(Brotherhood of Railroad **Signalmen**

PARTIES TO DISPUTE: (

(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 (Pacific Lines) violated the Agreement **between** the Company and the **Employees** of the Signal Department, represented by the Brotherhood of Railroad Signalmen, effective April 1, 1947 (reprinted April 1, 1958, including revisions) and particularly paragraph 7 of the Special **Signal** Technician Agreement, and Rule 16 which resulted in violation of Rule 70.

(b) Mr. Hanson be allowed three (3) hours at his time and one-half rate of pay for Saturday, September 12, 1970, and eight (8) hours **at his** time **and** one-half rate of **pay** for Sunday, September 13, 1970, a total of eleven hours.
[Carrier's File: SIG 152-279]

OPINION OF BOARD: Claimant ~~is~~ the assigned Signal Maintainer at the Eugene Retarder Yard with rest days on Saturday and Sunday. **The** Carrier assigned to the same area a Special Signal Technician with same rest days. The Technician's title was established by agreement of the **parties** dated May 25, 1967, Carrier's Exhibit A. In paragraph 2 of that agreement the technician's duties are described as: "**The** principle duties of **this** position **shall** be the inspecting, testing, repairing, replacement and adjusting of items of signal equipment---, and instructing other employees in the performance of these duties." Paragraph 7 of the same agreement includes the following statement: "Performance of duties as set forth in this agreement by incumbent of position of Special Signal Technician shall not be used to relieve or deprive signal maintainer of calls in connection with duties of their position which they now perform."

Rule 16 of ~~the basic~~ Agreement provides, in part, "**Unless** registered absent, regular assigned **employees** shall be called." Rule 70 provides: "A **employee---who** suffers loss of earnings because of violation or misapplication of---agreement shall be reimbursed for such loss."

The Carrier used the Special Signal Technician to perform work for three hours on a Saturday and for eight hours on Sunday. The claimant has contended that he was available for call on the Saturday and Sunday in question and would have been the **employee** to be called if the Technician had not been used. The regularly assigned Signal Maintainer on Saturday and Sunday has submitted a signed statement to the effect that he did not feel that the Technician did technical work and he described the work which was done, Brotherhood's Exhibit No. 3.

The Carrier contended, in its letter denying the claim that the Special Signal Technician provided technical advice required by the Signal Maintainer. The Carrier also maintained in this letter that claimant was not the senior **em-**ployee and would not have been called in any event, Brotherhood's Exhibit No. 2. The Organization answered this letter with a letter denying that only technical advice was provided and described work done by the Technician which has also been performed by a Signal Maintainer. In this letter of denial the Organization also provided the information (which was not contested by the Carrier) that the senior employee did not wish to be called ahead of the claimant whose name appeared at the top of the call sheets for overtime work, Brotherhood's Exhibit No. 4.

In again denying the claim, after a conference, the Carrier, by letter, argued that the Technician's duties includes the work done by him as well as instructing other employees in these duties. In this letter the Carrier also appears to say that it was not necessary to call another Signal Maintainer because the regularly assigned Signal Maintainer had worked; thereby a Signal Maintainer was not deprived of work, Brotherhood's Exhibit No. 6.

In its Submission, the Carrier took the position that no agreement supports the Petitioner's contention that a **second Signal** Maintainer should be called at overtime pay because the Technician is precluded from performing work of a nature that is also performed by a Signal Maintainer. The Technician, who is paid on a monthly basis, was compensated pro rata for working on his rest days.

We shall consider only the facts and the Agreements and Rules that were discussed during the handling of this claim on the property as they are set forth in the Record before us. The Petitioner has made out a prima facie case by describing the work which was available as set forth in the statement of the regularly assigned Signal Maintainer who worked with and was a witness to the work performed by the Special Signal Technician. Also, it is obvious that there was work available for an additional employee by the fact that the Carrier used the Technician on his **rest** days. The prima facie case is supported by paragraph 7 of the May 25, 1967 Agreement which says, in effect, that the establishment of the Technician's position should not be used to deprive Signal Maintainers of calls in connection with duties that they have been performing. The intention is clear; it is not ambiguous.

The Carrier has not denied that the Signal Maintainer could perform the available work. It has not claimed nor has the Carrier produced evidence to demonstrate that the available work could not have been performed unless the Technician was present to render technical assistance. The assertion that the Technician was giving **technical** advice to the regularly assigned Signal Maintainer is not supported by any **evidence**. After raising the question of seniority of the claimant, the Carrier did not pursue this contention or argue it after the Petitioner stated that claimant's name headed the call sheets.

This is not a claim of a demand right to the work. Work was **available** for an additional **employee** who could perform the work. The Signal Maintainer was not to be deprived of the call by the Technician, according to the Agreement. The claimant was the man to be called.

When a prima facie case is presented by the Petitioner, the Carrier has a duty to **submit evidence** to controvert the claim. We have weighed the material and relevant facts, rules and agreements and believe that the scales are tipped in favor of the Petitioner. The burden of proof concept is well established. **The burden** does not require overwhelming proof. It requires only that the proof offered be sufficient to weigh in **favor** of the party who has the burden, no matter how delicately the scale favors the party bearing that burden.

Rule 70 provides that when an employee suffers a loss of earnings by reason of a misapplication or violation of an agreement, he shall be reimbursed for the loss. To reimburse means to pay back in full or, to **compensate** for damages, time lost etc. In this case, therefore, the claimant would be entitled to receive all the compensation that he has lost by not being called.

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

The Carrier violated the Agreement.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulse
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of October 1973.