

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20415
Docket Number SG-20158

Irwin M. Lieberman, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company
(Chesapeake District)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District) that:

a) Carrier violated the current Signalmen's Agreement and past practice, particularly Rule 25, when Carrier allowed another signal helper from another territory (Force 1610) with headquarters at Newport News, Virginia, to be called for signal trouble on August 21, 1971, on territory assigned to Force 1616. As a result:

b) Carrier ~~now~~ pay claimant (Signal Helper Raymond L. Hill) five (5) hours at his overtime rate of pay for violation as cited in part (a) of this claim.

/Carrier's File: 1-SG-2987

OPINION OF BOARD: Claimant, a Signal Maintainer Helper, was not called to perform certain overtime on his rest day, but instead a Signal Maintainer Helper from another territory who was junior in seniority to Claimant was called. Petitioner relies on past practice and Rule 25 of the Agreement in support of its position that Claimant should have been called. Rule 25 provides:

"RULE 25-WORK OUTSIDE OF ASSIGNED HOURS
(Effective September 1, 1949)

Employees assigned to or filling vacancies on maintainer positions will notify the person designated by the management where they may be called and will respond promptly when called. If they are needed for work outside of regular assigned hours, the maintainer on whose territory the work is required will be called first. If not available, another qualified employee will be called. When a maintainer knows that he will not be available for calls on his days off duty, he will notify the designated person and there will be no obligation to attempt to call him. This shall **not** apply to monthly rated traveling **mechanics** covered by Rule 54.

First, with respect to Rule 25, the Agreement has defined each Class carefully in Rules 2, 3, 4, 5 and 6 and Rule 25 by its terms refers only to Maintainers. We must conclude that Rule 25 is not applicable to this dispute. Petitioner refers repeatedly to a practice of long standing in support of the Claim; the past practice, however, is never defined and there is no evidence in the record relating to the practice. Even assuming, **arguendo**, that there is a practice roughly paralleling **the provisions** of Rule 25 applicable to Helpers, there has been no rebuttal evidence presented to the admission by Claimant that he had notified Carrier in the past that he did not wish to be called for overtime work unless it was absolutely necessary. Carrier has the right to accept an **employee's** statement of unavailability under circumstances such as those in this dispute and not subsequently be held to have violated the terms of a Rule or practice. (See Awards 14208, 15809 and 16098).

Petitioner has failed to make a prima facie case in this dispute; the Claim must be denied.

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 27th day of September 1974.