NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20562
THIRD DIVISION Docket Number Z-20039

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railroad Company that:

The Carrier violated the Scope of the Signalmen's Agreement, particularly Rule 30, when:

(a) On April 27, 1971, at Savage, Maryland, signal equipment was put in service by signal employes from Baltimore West End Seniority District without the signal employes from Baltimore East End Seniority District being properly notified and asked to perform this work.

(b) Carrier should now compensate the following for all hours worked straight time and overtime by Baltimore West End signal employes, making a total of 10½ hours at time and one-half rate of pay and 8 hours at straight-time rate of pay.

Kermit L. DeBoard	Signal Foreman	ID 1105632
Glen Hinsdale	Leading Signal Maintainer	ID 1105980
Victor Stigile	Signalman	ID 1105981
G. W. Founds	Signalman	ID 1105966
G. C. Morrison	Assistant Signalman	ID 1105626

(Carrier's File: 2-SG-50)

OPINION OF BOARD: This claim is in behalf of members of Signal Force 1611 who hold seniority on the Baltimore East End Seniority District. They assert that the Signalmen's Agreement was violated, particularly Rule 30 thereof, when signal work was performed in their seniority district by Signalmen from another seniority district. The disputed work was performed on April 27, 1971 when Signal Employees from the Baltimore West End Seniority District made a signal equipment cut-over in the Jessup-Savage area of Maryland. This area is located within the Claimants' seniority district designated as the Baltimore East End Signal Seniority District. The West District Signal Force, consisting of six members, consumed 18½ hours, including travel time, in making the cut-over. On the date of the cut-over at Savage, the Claimants were working approximately 125 miles away at Philadelphia, Pennsylvania. Each Claimant, except the Foreman of the force, worked overtime on the claim date.

There is no dispute that under Rule 30 the East End and the West End of the Baltimore Division are separate Seniority Districts. Also the Carrier concedes in its Submission that it met its service requirements on the claim date by "borrowing" for a day a signal force from another territory. The Carrier asserts, however, that the Claimants were working on a major project which was so urgent that no employees could be spared therefrom and that Claimants had been declining overtime which was being offered to them at Philadelphia.

In reviewing the foregoing, and the whole record, it becomes clear that the Carrier concedes that it used employees from one seniority district to perform work on another seniority district. The Carrier's justification is that it was important to have the cut-over at Savage performed on the claim date and that, in order to achieve that objective, the Carrier had the limited options of having the East End employees travel 125 miles from Philadelphia to Savage, or having the West End employees travel a much shorter distance to Savage. The considerations which made the latter option more desirable from the Carrier's operational viewpoint are obvious. However, the Carrier has pointed to no agreement language which provides that such considerations may be used to justify the transfer of work from one seniority district to another. We find none and consequently, on the instant record, we conclude that the Carrier's use of the West End employees violated the agreement rights of the East End Signal Force 1611. We further conclude that such violation deprived the Claimants of an opportunity to perform work secured to them by agreement, and thus the Carrier's assertion that most of the Claimants worked on the claim date, plus overtime, and declined overtime during the claim period is no defense. The Claimants are the employees who would have performed the work if the agreement had been followed; by a conscious decision of the Carrier, the Agreement was not followed and thus the Claimants are entitled to a compensatory award for the loss of their work-opportunity. See Award Number 13832 for a similar ruling where signal work, relating to installation of a hot box detector, was transferred by the Carrier across seniority district lines because the job was too small to move camp cars to the work site and because the distance was too great to travel by truck.

We shall sustain the claim.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Panbe
Executive Secretary

Dated at Chicago, Illinois, this 30th day of December 1974.

DISSENT OF CARRIER MEMBERS' TO AWARD NO. 20562 -
DOCKET NO. SG-20039 - (REFEREE BLACKWELL)

The claimants in this case were working on a major and urgent project at Philadelphia, Pennsylvania. Each of the claimants, with the exception of Foreman DeBoard, worked their eight hour tour of duty, plus approximately three hours' overtime on the date of claim. Foreman DeBoard worked only the eight hour tour of duty, electing not to perform overtire.

These same claimants were listed in another dispute before this Board seeking additional compensation for work not performed at Philadelphia, Pennsylvania. This is a double-barrel approach end evidently they are looking for every opportunity to penalize the Carrier for their own personal monetary gain.

The Award states:

> "* * * The Claimants are the employees who would have performed the work if the agreement had been followed; * * * thus the Claimants are entitled to a compensatory award for the loss of their work-opportunity. * * *"

What loss? There was no loss. The Agreement does not provide for payment under such circumstances and if the Agreement had been followed in this case there would be no compensatory award.

They were not deprived of anything. The measure of damages for breach of agreement is actual loss necessarily incurred by the injured party. This Board has no jurisdiction to create penalties.

Therefore, we must vigorously dissent to this erroneous award.

H. F. M. Braidwood

P. C. Carter

W. F. Euker

G. L. Naylor

G. M. Youhn