

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21617
Docket Number SG-21800

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern:

On behalf of Assistant Signal Maintainer D. A. **Sanda**, Duluth, **Minnesota**, for a minimum call of two hours and forty minutes at one and one-half times his regular rate of pay, for each day, June 1 and 3, 1975, account not called on those dates to assist Mr. W. L. Huff, the Duluth Interlocking Maintainer, on trouble calls on their assigned territory. (General Chairman file: TC-75-14. Carrier file: **SI-60 7/17/75 A**)

OPINION OF BOARD: Claimant was the incumbent of a position of Assistant Signal Maintainer at Duluth, Minnesota; he was assigned to work with Interlocking Maintainer W. L. Huff, Claimant's assigned hours were Monday through Friday, **8:00** A.M. to 5:00 P.M., with Saturday and Sunday as rest days. Paragraph P. of Rule 2 describes his position as follows:

"P. ASSISTANT SIGNALMAN-ASSISTANT SIGNAL MAINTAINER: An employee in training for the position of relay repairman, signalman or signal maintainer working with and under the direction of a relay repairman, signalman or signal maintainer."

On Sunday June 1, 1975 Maintainer Huff was called at **4:30** P.M. to remedy a malfunction in a switch at the Duluth Drawbridge. He completed the necessary repairs by **6:30** P.M. On Tuesday, June 3, 1975 Maintainer Huff was called at **9:00** PM, when a signal at Grassy Point did not clear properly; he responded to the call and restored the **signal** to proper working order by **10:30** P.M. On neither occasion did Huff need assistance to perform the necessary work; Claimant was not called out on either occasion, thus triggering this dispute.

Petitioner asserts that any employee assigned to regular maintenance duties is entitled to be called for work on his assigned territory. A large number of prior instances extending over a period of five years were cited by Petitioner to indicate a long standing practice of calling out Claimant to assist the Maintainer on trouble calls outside of regular hours. In addition, Petitioner relies, in part, on **Rule 12**, which provides in pertinent part:

"RULE 12. SUBJECT TO CALL.

"A. An employee assigned to regular maintenance duties will notify the person designated by the Carrier where he may be called by filing his home address and telephone number, if he has a telephone, with such person. An employee called to perform **work outside** of assigned working hours will respond promptly when called. **The** regular assigned employee, if available, will be called for such work on his assigned territory."

Petitioner also cites some prior awards (Awards 6218 and 1125) which held that rules, such as **Rule** 12 herein, contain a mandatory provision that the Carrier will call regular incumbents **unless** they are registered absent, when there is overtime work to be performed.

Carrier argues that it is not required to send two employees to do one man's work. In support, Rule 12 is cited which states that the regularly assigned employee (in the singular) will be called for such work on his assigned territory. Carrier points out that the regularly assigned Maintainer performed the necessary work without help. Carrier argues that in the absence of a restrictive rule, it is entitled to assign its employees as it sees fit and it saw no need for two employees in the two instances in dispute. Carrier argues that there is no rule which requires calling two men for one man's work. It is contended that Petitioner has failed to indicate any rule in support of its position. While admitting that Claimant and others may have previously been called to assist the maintainers, Carrier asserts that this does not establish a past practice. Carrier argues that past practice may only be considered when the contract language is ambiguous and it is necessary to ascertain the intent of the parties; Rule 12 is held not to be ambiguous.

It is noted that the two prior Awards cited by the Organization are not controlling since they both deal with fact circumstances in which employees other than those regularly assigned were called out to do work on overtime (or on call). We find no rule support for Petitioner's position in this dispute; there is no basis for restricting Carrier's normally exercised managerial prerogative of **determining** how many employees are required for the work in question. In Award 16216 (and in a host of other awards holding similarly) **we** said:

"It is well established that Carriers may determine the manner in which work and operations are to be performed in the best interest of efficiency and economy unless such rights are restricted by Agreements, ,."

In the instances involved in this matter Maintainer Huff was called in a proper manner to perform the type of signal work he performed during his regularly scheduled work week. There was no contractual basis to force Carrier to call one or more additional employees, who were not needed, regardless of their regular weekly assignments.

For the reasons indicated, the Claim must be denied.

FINDINGS: The 5ird 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 the Agreement was not violated.

A W A R D

Claim denied.

NATIONALRAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1977.