

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Nuder 22402
Docket Number **SG-22312**

Abraham Weiss, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad **Signalmen**
(
(**Atlanta** and West Point Railroad **Company-**
(The Western Railway of Alabama
(Georgia Railroad

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atlanta and West Point Railroad Company-The Western Railway of Alabama:

On behalf of Telephone Maintainer F. L. **Thigpen** and Assistant Telephone Maintainer **M. L. Johnson**, for two hours and forty minutes overtime pay each account carrier using Signal Maintainer J. F. Mitchell to **clear** telephone trouble on July 17, 1976, at M.P. 85.2; and on behalf of Assistant Telephone Maintainer M. L. Johnson for **one** hour and fifty minutes overtime pay account carrier using Signal Maintainer J. F. Mitchell **from 4:00 p.m. to 8:30 p.m., July 18, 1976, to clear** telephone trouble at College Park, Ga." /Initial claim for July 18 was for **two hours and forty minutes** for **Thigpen**, and **four** hours and thirty minutes for **Johnson**, but Carrier stated it paid each for two hours and forty minutes/

OPINION OF BOARD: On July 17, the dispatcher and message **phones between Atlanta and Montgomery malfunctioned.** The dispatcher, after ascertaining that the **trouble was** located west of **LaGrange**, called **telephone** maintainer **Newsome** whose territory MS **LaGrange** west of Montgomery. **Newsome was** unavailable and a signal **maintainer** was instructed to **make** temporary repairs. The **Claimants'** assigned territory, which is contiguous with **Newsome's**, runs **east** of **LaGrange** to Madison. Claimants contend they were available and entitled to be called under Rule 59. Carrier, however, denies an obligation to call **them** because **the malfunction** was not on the Claimants' **assigned** territory.

The second part of the **claim** relates to July 18. On that date the malfunction occurred on the Claimants' territory. The dispatcher attempted to contact **them** but they were not available. The signal maintainer was directed to **make** the repairs. However, the dispatcher continued to try to reach the **Claimants (Thigpen and Johnson)** and reached them **2½** hours later, directing them to assist

in the repairs. **But** before Claimants left home the malfunction **was** corrected and **they** were instructed not to report. **Each Claimant**, accordingly, was paid a 2 **hour** and 40 minute call by Carrier.

The **original** claim for July 18 was 2 hours and 40 minutes for **Thigpen** and 4 hours and **30 minutes** for Johnson. During the **handling** on the property each claim was reduced by 2 hours and 40 minutes because of Carrier's **payment** for the call.'

The **claims** are based on Rule 18 and Rule 59. **Rule 59** is particularly relevant. It reads:

"(d) Signalmen will perform only signal work. Telephone-Telegraph **men** will perform only **communication** work. **When failures occur** to either system or emergencies occur, if an employee assigned to the class of work is not available, employees of the other craft may be used to put the **system in temporary working** order. **Permaaeat** repairs will be **made by employees** in the craft of the work."
'(underlining supplied.)

Rule 59 is fairly straightforward. It requires that the Carrier call those, and only those, **employees who** were reasonably available and who were assigned to the class of work in which **the** failure or emergency occurs. The rule does **not**, as the Carrier suggests, limit its application to calling only **employees** assigned to the territory **on** which the failure or **emergency** occurs but **those** assigned to **the class of work who are available**. There is **no** language in Rule 59(d) or the **Agreement** as a whole, to **support** the Carrier's **argument**. Although the Carrier **contends that Rule 18 is** such a rule, that **rule** only requires that the regularly **assigned employee will be** called whea there is overtime on **his assignment**. It does aot say that only this **employee** will be called on failures or emergencies. Rule 59 specifically encompasses these **contingencies** and states "an employee assigned..," will **be** called if available. It does **not** specify or **limit which employe** of that class **will** be called. The only **limitation is availability, which can vary depending** on the specific facts and circumstances of each case. As this Board has stated **before**, a Carrier is not obligated to use **employees** who are not reasonably available.

Our reading of the language of Rule 59 leads us to find that **the** claim for July 17 **must** be sustained. The **employees** have claimed that they were available on July 17; Carrier has never rebutted **this**. The Carrier might have successfully argued that the **Claimants** were **not** available, taking **into** account the nature of the emergency **and** the distance involved, but such argument **was** not **made**.

Regarding the claim for July 18, the Carrier has **shown** that the Claimants were called, but were not at home, **and**, therefore, they **were** not available. The Carrier fulfilled its **obligation** under Rule 59 when it attempted to reach the Claimants. Carrier was then free to use an **employee** of another class to make temporary repairs, **assuming** that no other telephone maintainers were **reasonably** available. The fact **that the** Claimants were later contacted and released **and paid** 2 hours and 40 minutes is **irrelevant**.

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 violated to the extent shown in Opinion.

A W A R D

Claim sustained to the extent indicated in the Opinion and **Findings**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, **Illinois**, this 18th day of May 1979.