

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24418**
Docket Number **SG-24268**

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad **Signalmen**
(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 (Pacific Lines):

Cn behalf of Signal Maintainer G. Ochoa, **Hermosillo** District, **Gardena**, CA, for two hours **and** forty minutes at one and one-half times his regular rate of pay, **account** not called on his assigned territory on May 20, **1980**." (Carrier file: SIG **148-312**)

OPINION OF BOARD: The basic question before this Board is whether Carrier appropriately complied with the emergency call procedures on May 20, **1980** when signal trouble developed on the maintenance district where Claimant was assigned. Claimant contends that Carrier violated Agreement Rules 18 and **19** when it called Signalman D. Smoot to perform the needed repair work, notwithstanding, Claimant's availability and priority right to the work. He submitted a statement **co-signaturized** by his wife, dated September 20, **1980**, attesting that he was home on the evening of May 20, **1980** and at the **time** the signal trouble occurred, but that he did not receive any calls from Carrier. He argues that there is no evidence that Carrier complied with the emergency call procedures, which in essence, requires **two** telephone attempts, and asserts that the decisional law on this point underscores and supports his position.

Carrier argues that it fully comported with the call procedures, **since** both the **Los Nietos** Operator and the Signal Construction **Manager** tried to reach him at his home. It contends that when the **Los Nietos** Operator could not contact Claimant or the two other adjoining Signal **Maintainers** available for call she apprised Signal Construction Manager **J. E. Duff** of her unsuccessful attempts. It avers that when **Mr.** Duff tried to contact the same three employees but without success, he called Signalman **Smoot**, who responded to the call and made the signal repairs. It asserts that it properly called Claimant twice, but he did not respond and could not explain why the two calls failed to reach him.

In considering this case, we agree with Carrier's position that the claim should be dismissed because of the direct conflict in statements. There is no dispute regarding Claimant's averment that Carrier was obligated to call him twice before contacting another qualified signal employe, but we have no clear and convincing evidence that Carrier did not try to reach him twice. Perhaps, the **Los Nietos** Operator should have attempted a second call, before referring the matter to the Signal Construction Manager, but his purported follow-up call represented a second call, which technically was in **accordance** with accepted procedures. In a similar vein, we cannot disregard out of hand Claimant's September 20, **1980** statement affirming that he was home at the **time**, but this

statement by itself, ~~is~~ sufficient to ~~overcome~~ Carrier's contrary assertions. In order to prevail, Claimant as the moving party would have to show conclusively that neither the ~~Los~~ Nietos Operator nor the Signal Construction called him. This he has not done. In either case we cannot conclude dispositively who is correct. In **Third** Division No. **22920**, which we find judicially relevant here, the Board held in pertinent part that:

"Claimant argues that he was home on May 21, 1978 prior to 3:00 P.M. and did not receive a call. He submitted a notarized affidavit dated September 22, 1978 to attest to this assertion. Carrier contends that it called him at 8:15 A.M., 8:40 A.M. and 9:00 A.M. and submitted a letter, dated December 13, 1978, which was signed by Supervisor **Esworthy** that said calls were made. There is no clear showing that either position is absolutely correct, although there is a strong presumption that the calls were made."

We dismissed the claim in that dispute because we could not resolve the evidentiary conflicts. We are compelled to do likewise in the instant case. The evidence of record does not persuasively support either position.

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

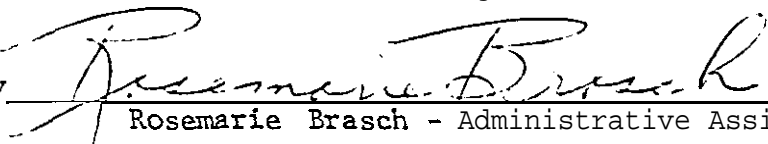
That the Agreement was not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of June 1983.