

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24834
Docket Number SG-24845

Robert Silgai, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Central of Georgia Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Central of Georgia Railroad Company:

(a) Carrier violated the Signalmen's Agreement, particularly Rule 19 among others, when they called Signal Maintainer D. P. Johnson on Sunday, July 5, 1981, to repair a crossing signal failure at South Lee crossing, M.P. 277.6 on Claimant's assigned territory when Claimant Baker was available.

(b) Carrier should now be required to compensate Traveling Signal Maintainer R. K. Baker an amount equal to four (4) hours at his overtime rate of pay, in addition to any other pay he has received, for this loss of work opportunity and because the agreement was violated." (General Chairman file CG-65. Carrier file SG-516)

OPINION OF BOARD: The issue in this case is whether the Carrier made a reasonable effort to call the claimant to work on his day of rest. The Brotherhood claims that no such effort was made thereby violating Rule 19(a) which reads:

"Rule 19. (a) Employes assigned to or filling vacancies on maintainer positions will notify the person designated by the management where they may ordinarily be called and will respond as promptly as possible 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 employe will be called. When such employes desire to be off call on rest days or holidays, they will notify the Supervisor of Signals in writing three days in advance of such rest day or holiday. In case, for any reason, the Supervisor of Signals notifies the employe that he may not be off call on such rest day or holiday, the employe will be considered as held on duty and shall be paid for an eight-hour day at the overtime rate for the hours of his assignment on regular work days for each day held and, in addition, will be paid under Rule 18 when called outside of such hours."

The Carrier's version of the facts are as follows:

On Sunday, July 5, 1981, a grade crossing signal malfunctioned. Upon learning of the trouble, R. O. Daniels, Communications and Signal Supervisor, telephoned claimant at his home. There was no answer. On a previous occasion claimant had given Daniels the telephone number of his mother and of his

mother-in-law. Daniels called both numbers in his file and, upon receiving no answer at either number, concluded that claimant was unavailable. Daniels then called a substitute signalman to make the repairs.

The Brotherhood asserts that on the Sunday in question claimant was visiting his brother who lives with his mother. The brother and the mother have the same telephone number. Had Daniels indeed called the telephone number of claimant's mother, Daniels would have found claimant there. Claimant produced a statement signed by four of his relatives attesting to his presence in his mother's home on that day. The Brotherhood therefore asserts that Daniels did not telephone claimant's mother.

Rule 19 does not specify the manner in which a maintainer is to be called. The rule does impose an obligation upon the Carrier to make a reasonable effort to locate the employee. An equal obligation is imposed upon the employee to give his supervisor a telephone number where he can be reached quickly so that he may respond to the emergency without delay.

The record in this case, according to the Carrier, shows that Daniels made an honest, reasonable effort to locate the claimant and thus satisfied Rule 19. The Brotherhood's account of the facts indicates that Daniels made no attempt to find the claimant. In this posture the Board is presented with an irreconcilable conflict in evidence. The burden of proof in such disputes rests with the claimant. It is well settled that as an appellate body this Board does not resolve conflicts in evidence. From the status of the record in this case and the conflicting contentions coupled with the absence of proof relative to what actually occurred, this Board has no recourse but to dismiss the claim (Award 21894 - Roukis; Award 22428 - Scarce and many others).

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: 
Nancy J. Deve - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May, 1984