

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26340  
Docket Number X-26501

Herbert L. **Marx**, Jr., Referee

PARTIES TO DISPUTE: ( (Brotherhood of Railroad Signalmen  
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

On behalf of Maintainer **J. F. Stoner**, **Man** No. 077458; assigned territory Section 402, assigned headquarters Cola; assigned hours **7:00 a.m. to 3:30 p.m.**; assigned rest days Saturday and Sunday.

(a) Carrier violated the **current** Agreement between Consolidated Rail Corporation and the Brotherhood of Railroad Signalmen, Appendix P of the agreement was violated when Maintainer **R. E. Everetts, Jr.** was used **to** perform signal work at Goldsboro Substation on January 3, 1984.

(b) Carrier should now be required to compensate Maintainer **J. F. Stoner** for a call of three **(3)** hours at one **(1)** and one half **(1/2)** times his regular rate of pay. (Carrier file: X-2127)"

OPINION OF BOARD: On **January 3**, 1984. the Carrier required an overtime call for a Maintainer to make a repair to Signal N-721. The Claimant was the first employee called. When the call was made at **4:52 P.M.**, **the** Claimant's line was busy. A second call was made at **4:54 P.M.**, and the line was still busy. The Carrier thereupon called another Maintainer at **4:54 P.M.**, who responded to the call and subsequently made the necessary repair.

The procedure for calling Maintainers outside their regular working hours is contained in Appendix "P", which reads in pertinent part as follows:

"8. Employees will be called from the appropriate list for work in the order in which their names appear on the list.

9. A reasonable effort will be made to comply with the procedure outlined above but this shall not be permitted to delay getting a qualified employee to report promptly at the point necessary to cope with the situation.

10. In the application of this understanding two calls will be made to the first six (6) employees whose names appear on the calling list. One call will be made to other individuals on the list. . . ."

The Claimant seeks three hours' **pay** at the punitive rate.

The Carrier argues that it complied with Appendix "P", Section 10, which requires that "**two** calls" be made to each of the first six employees on the call list. The Organization argues that making two calls within two minutes and receiving a busy signal (indicating that someone was available to receive the call) was not a "reasonable effort," as required by Section 9.

The parties hereto have established an unusually precise procedure for calls, and this instance requires a narrow interpretation confined to the particular facts. The purpose of the **two** calls is obviously to determine if the called employee is available at his calling location. Here, the busy signals, made within two minutes of each other, at least indicated that the Claimant was not absent from his calling location. It is questionable that a busy signal can reasonably be determined as a completed call. In the circumstances, a further attempt would have been "reasonable."

On this basis, the Board will sustain the Claim. There is, however, a further dispute as to the remedy. The Organization, **in** support of its position that pay for three hours should be at punitive rate, cites Rule **4-B-2(b)**, which reads as follows:

"(b) Employees called after release from duty to perform service outside of and not continuous with regular tour of duty shall be paid at the applicable overtime rate from the time called to the time returned to the point at which called or their headquarters with a minimum of three (3) hours at the **time** and one-half rate."

The Carrier argues that this provision affords time and one-half pay where the overtime is actually worked, and it does not follow that the punitive rate is necessarily applicable where the work is not performed.

While previous Awards have reached varying conclusions on this point, the Board finds in this instance that payment at the straight-time rate is more appropriate. The Claimant was not inconvenienced by having to perform the work, and the Carrier can be credited with a sincere (if insufficient) effort to meet the requirements of Appendix "P".

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 Employee 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

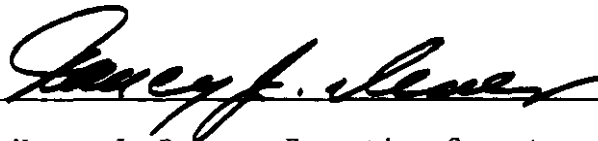
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third **Division**

Attest:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of June 1987.