Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 27583
THIRD DIVISION Docket No. SG-26895
88-3-85-3-671

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

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

STATEMENT OF CLAIM:

"Case No. 1

Claim on behalf of G. J. Lowe, 991929 Signalman C&S Gang HCR 4 with headquarters at Lemo C&S building, Lemoyne, PA.

A. Claim that the Company violated the current Agreement between Consolidated Rail Corporation and Brotherhood of Railroad Signalmen, particularly Rules 4-B-2(b) and APPENDIX 'P,' when on the date listed below they used S. L. Casner, Signalman C&S Gang HCR 4, a junior Signalman to help renew a 6600 volt transformer at Jeb Interlocking on Harrisburg Division.

September 3, 1984 6:00 AM - 3:30 PM 9.5 hours

B. Claim that since G. J. Lowe, was not given the opportunity to perform the extra duty mentioned above, that he be paid a total of nine hours and thirty minutes at the time and one half rate of pay for Signalmen. Carrier file: SD-2173.

Case No. 2

Claim on behalf of R. E. Evertts, Jr., 037878 Maintainer C&S, Section 306 with headquarters at Lemo C&S building, Lemoyne PA.

A. Claim that the Company violated the current Agreement between Consolidated Rail Corporation and Brotherhood of Railroad Signalmen, particularly Rule 4-B-2(b) and APPENDIX 'P' Rules 6 and 8, when on the date listed below they used T. J. Finegan, Maintainer C&S, Rockville Tower to clear trouble at Day Tower (creek) on 31 Switch which is on Maintainer Evertts Section 306.

October 11, 1984 6:30 PM - 9:30 PM 3 hours

B. Claim that since R. E. Evertts, Jr., was not given the opportunity to perform the extra duty mentioned above, that he be paid a total of three (3) hours at the time and one half rate of pay for his present position, which is stated above. Carrier file: SD-2174"

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This docket combines two different claims which are somewhat similar.

Case No. 1

A pay claim was filed on October 24, 1984, on behalf of Claimant on the grounds that the Carrier was in violation of Rule 4(B)(2)(b) and Appendix "P" of the Agreement when it used a Signalman junior to the Claimant to "...help renew a 6600 volt transformer at Jeb Interlocking on (the) Harrisburg Division." The work was done on September 3, 1984, from 6:00 AM-3:30 PM at premium pay. In its various denials of the claim the Carrier states, first of all, that all possible attempts were made to contact the Claimant both by his foreman and by the Trouble Desk at a telephone number on file. There was no answer. The Carrier cites Rule 7 of Appendix "P" which requires that an employee furnish a valid telephone number for any work outside their regular tour of duty. By not providing such number the Carrier argues that the Claimant was in violation of this provision. Both the Supervisor C&S and the Carrier's Senior Director of Labor Relations advance this reason for denying the claim. On December 26, 1984, one of the Carrier's Managers of Labor Relations, however, gave a different reason for denying the claim. According to this officer, the claim was denied because the Claimant was on vacation for the week of the date in question and "...by past practice employees on vacation are not called for overtime work."

The Organization, in its final appeal prior to docketing this claim before the Board, states that if the Carrier had called the number on file the caller would have received a recorded message with information about a correct forwarding number. The intimation here is that the calls may never have been made to the Claimant for the September 3rd overtime. The Organization also underlines that the Carrier had, in fact, called another Signalman on the date in question to do overtime work and this employee was also on vacation. Thus the Organization concludes that "...just because (the Claimant) was on vacation (which is not denied) this would not prevent him from performing any work during that week."

In studying the record the Board notes that the Carrier does use two different arguments to deny the claim. These arguments, however, are not necessarily contradictory. The Manager of Labor Relations, in his December, 1984, letter never states that attempts were not made to contact the Claimant for the September 3rd work. He simply states an argument about what he considered to be past practice. The Organization's representative subsequently contests that such was a practice, or at least a consistent practice. The Board will not take a position on this issue. It is not necessary to do so in order to rule on the merits of this claim. The merits of the claim must center on whether attempts were made to contact the Claimant, in accordance with his privileges on the seniority roster, to do the work at bar. The Carrier states that both the foreman and the Trouble Desk attempted to call the number on file. There was no response. This was just prior to when the work was to be done on September 3rd. Not until the final appeal of the claim some ten months later does the Organization bring up the fact that there was an answering machine on the Claimant's phone which gave a forwarding number. It is unclear to the Board why the Claimant did not provide the Organization with this information when the claim was first filed. Given the total record before it the Board must reasonably conclude that there is strong probability that the answering machine was installed after the date for which the pay claim is made. Since such is so the evidence required by the Claimant as moving party in this case does not sufficiently meet the criteria of substantial evidence and the claim must be denied. Such conclusion is warranted also because of the lack of corroborating evidence of any kind in the record to the effect that the supervisor and/or Trouble Desk would have fabricated information about attempted calls made to the Claimant. Indeed grounds for such motives are completely lacking in the record.

Case No. 2

On October 24, 1984, a claim was also filed by the Organization on behalf of Claimant on the grounds that the Carrier had been in violation of the same provisions of the Agreement and the same Appendix "P", as was the alleged Case No. 1 whose claim is discussed and ruled upon in the foregoing. In this case the Organization alleges that the Carrier used the wrong Signalman to "...clear trouble at Day Tower (creek) on 31 Switch which is on (the Claimant's) Section 306." Since it is the position of the Organization that the Claimant should have been used they are requesting three (3) hours at overtime rate which is the amount of time it took to do the work on October 11, 1984. The Carrier's reasons for denying the claim in this case are different than the reasons proffered in Case No. 1. In this case the Supervisor of C&S states that the claim is denied because "...the work performed on 31 switch at Creek was done on straight time by a Maintainer C&S on his normal tour of duty." The denial letter goes on to say that the Agreement provision and Appendix cited only apply to overtime and "...calling employees outside regular working hours" and that such did not happen here. The Carrier, in later letters of denial, states that the records show, furthermore, that no overtime "...wages were paid to clear trouble at 31 Switch, Day Tower."

In its final appeal on property the Organization does not deny that the work was done at straight-time pay by a "...trouble track maintainer during his regular tour of duty." The argument advanced, however, is that the track maintainer was doing work out of his section, on regular duty, whereas the work should have been done by the Claimant on overtime basis. The Organization states that "...(t)he Carrier failed to show any proof the performed work on October 11, 1984 was not on (the Claimant's) section where he is the regular assigned maintainer."

The thrust of the Organization's reasoning in Case No. 2 is that the Claimant had exclusive jurisdiction over all signal work in Section 306. The Board has searched the record for Agreement justification for this position and it can find none. This Board has always held, in the past, that as a general principle Carriers retain managerial prerogatives to assign various personnel on regular assignment to accomplish various jobs unless restricted by contract from doing so (Third Division Awards 19596, 21617, 25128 inter alia). As moving party in this case the Organization has not sufficiently met the burden of proof that all signal work in Section 306 was his exclusively. (Second Division Awards 5526, 6054). The claims must, therefore, be denied.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1988.