

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (WL):

On behalf of Mr. D. R. Wise, Signal Maintainer, Elvas, CA.

A. That the Southern Pacific Transportation Company violated the current agreement between the Southern Pacific Transportation Company and the Signal Department employees, and in particular Rule #19, when on February 1, 1986 a member of Signal Gang #8, stationed in Sacramento, was called to work in the Classification Yard in Roseville instead of Mr. Wise who is subject to call.

B. That Mr. Wise be paid the two and two-thirds (2 2/3) hours overtime he missed because of not being called in accordance with the agreement. Carrier file SIG 125-199."

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.

Central to this dispute is Letter of Understanding No. 6 interpreting Rule 19 as follows:

"This has reference to Item 6 of the Memorandum of Agreement dated October 23, 1981 relating to Rule 19 (Subject to Call).

It was understood that in the application of Item 6 (insofar as it relates to the calling of signal maintainers), the following sequence of call will apply:

1. The regularly assigned signal maintainer.
2. The nearest available adjoining signal maintainer to the trouble location, if he can report within thirty (30) minutes.
3. Any available Signal Department employe covered by the Agreement on the seniority district."

The instance giving rise to this dispute involved signal repairs in the Roseville Hump Yards on February 1, 1986. The incumbent Hump Yard Signal Maintainers were unavailable for the call. Also unavailable was what the Carrier referred to as the "nearest adjoining Signal Maintainer." The Organization did not dispute this designation of the unavailable employee (following the two incumbent Hump Yard Signal Maintainers).

The Carrier thereupon called a non-maintenance signal employee, who lived nearby, was available, and performed the service.

The claim is on behalf of a Signal Maintainer who, according to the Organization, would have been available for service within 30 minutes. The Organization argues that he was entitled to be called in preference to a non-maintenance signal employee.

The priority of calling of Signal Maintainers does not, however, rely primarily on the 30-minute availability. After the regularly assigned Signal Maintainer(s), the next call is to the "nearest available adjoining signal maintainer to the trouble location." The Organization appears to read this as if the word "adjoining" were not there. If the call were for the "nearest available" Signal Maintainer, the Claimant may well have been entitled to the call. But the second priority of call is limited to an "adjoining" Signal Maintainer, and the record shows no contention that the Claimant was such.

Given these circumstances, the Carrier properly exercised its rights to call "any available Signal Department employe." In doing so, the Carrier elected to call an employee who was quickly available and did not make an arbitrary selection as against the Claimant.

Public Law Board No. 3402, Award No. 3, involving the same parties and the same rule, reached the identical conclusion, stating as follows:

"It is plain to us that the Letter of Understanding No. 6 modified the previous interpretations of Rule 19 by establishing a strict entitlement of priority among Signal Maintainers ('insofar as it relates to the calling of Signal Maintainers'), i.e.: 1) first priority to the regularly assigned Signal

Maintainer and 2) second priority to the nearest available Signal Maintainer who can report within thirty minutes. If Carrier calls Signal Maintainers in this sequence without getting a response then, under (3) it is free to call any available Signal Department employee covered by the Agreement on the seniority district, irrespective of whether a Signaller or Signal Maintainer, and without the condition that s/he be able to report within thirty minutes. Under this plain and unambiguous language, [Claimants] Dunivan and Phipps had equal entitlement to be called and Carrier had managerial discretion to call either or neither of them, subject always to the implicit requirement that such management rights be exercised in a reasonable and non-arbitrary fashion. Carrier's decision to call Phipps rather than Dunivan cannot be deemed unreasonable in the circumstances."

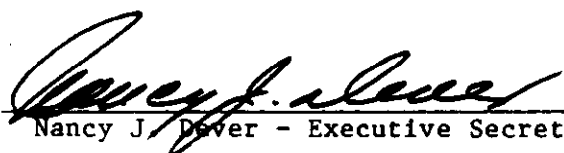
It should be noted that this quotation omits use of the word "adjoining" as included in the Letter of Understanding. The Award is in point, however, as to the calling of "any" Signal Department employee as the Carrier's final option.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1988.