Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 27851
THIRD DIVISION Docket No. SG-27009
89-3-86-3-49

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
(
(Baltimore and Ohio Chicago Terminal Railroad Company
(B&O CT)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Chicago Terminal Railroad Co. (B&O CT):

(a) Carrier violated the current Signalmen's Agreement as amended, particularly the Scope, when it failed to call the senior employees to do the work required by the M.C.I. construction Co. working on the Baltimore & Ohio Chicago Terminal Railroad.

(b) Carrier should now be required to compensate its signal employees assigned to maintenance duties, Mr. William Krueger Sr. I. D. No. 1598366 Signal Maintainer North Harvey and Mr. Kenneth Roche I. D. No. 1597804 Signal Maintainer Argo, IL for all lost wages.

(c) Carrier has not been calling the proper employees to work the overtime on rest days and holidays. Mr. M. Indicavitch, I. D. No. 1598419 Blue Island Maintainer has been temporarily off call. That would make Mr. Wm. Krueger Sr. the next senior employee for all and any overtime on that territory. Mr. K. Roche is the assigned maintainer at Argo and should be the first one called for any and all overtime on his territory. (Carrier file: 3-SG759)"

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.

The instant Claim involves an allegation by the Organization that the Carrier was in violation of Rules 15(g) and 21 of the current Agreement when it used a junior Signalmen on five different dates in September, October and November of 1984 to work overtime, rather than the two Claimants.

The Rules state, in pertinent part, the following:

"Rule 15(g)

When overtime service is required of a part of a gang or group of employees, the senior employees of the class involved, who are available, will have preference of such overtime if they so desire."

"Rule 21

NOTIFYING DESIGNATED OFFICER WHEN LEAVING HOME STATION

Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and will notify the person designated by the Management where they may be called. When such employees desire to leave their home station or section, they will notify the person designated by the Management that they will be absent, about when they will return, and when possible, where they may be found."

The facts of the case are that the Carrier leased right of way work to a contractor, MCI Corporation with the understanding that Signalmen working for the Carrier would work with MCI to locate signal cables. From the latter part of September through about the middle of November of 1984 this contractor surveyed locations from Barr Yard to Pine Junction which is territory covered by the junior Signalman to this case. This Signalman was assigned to work with the contractor. On five (5) dates, which included one (1) Friday and four (4) Saturdays, this junior Signalman was requested by the Carrier to work overtime to complete work begun with MCI during his regular workweek. It is these dates which are in dispute.

In view of the facts of record the Board must dismiss the contention by the Organization that Rule 21 was violated. This Rule does not apply to the instant case. Did Rule 15(g), however, require the Carrier to call the two Claimants rather than the junior Signalman for the overtime hours? Because of the particulars of the arrangement which the Carrier had with the contractor, the Board believes that it would be incorrect to interpret the overtime service which the junior Signalman worked as "...overtime service... required of a part of a gang or group of employees...". The junior employee was working with the contractor because of the contractual arrangement which the Carrier had with the latter. Third Division Award 19752 arrives at a similar conclusion with respect to the interpretation of a Rule similar to 15(g). The Board also believes, as an additional point, that the Carrier was not in violation of the Agreement by assigning overtime to a junior employee if such flowed from his specific assignment. Precedent for such conclusion can be found in Public Law Board 1660, Award 37 which states the following in pertinent part:

> "... Since the overtime work accrued to or flowed from the assignment of the junior employee, the Board does not find it a violation of any principle of seniority, or any contract rule, for the Carrier to permit the junior employee to complete the work of his assignment, albeit on an overtime basis. Absent a specific contract rule that provides that seniority shall be applied on an absolute basis, it was neither improper not unfair for the Carrier to allow the incumbent of the position to work overtime on his job rather than assign the overtime work to a senior employee who was the incumbent of a different position."

The Organization argues in its rebuttal that Rule 15(g) does apply since the Claimants also were assigned to work with MCI in their territories doing the same thing as the junior employee and were, therefore, "...part of a gang or group of employees...". The Board believes that the facts more reasonably support the conclusion that it reached in the foregoing on this issue. The Organization also argues that the overtime did not represent an extension of an existing assignment, but that it was work done "...on the Claimants' territories and (on) their rest days...". The evidence developed by the Organization is less than clear with respect to whether the junior Signalman worked overtime on the Claimants' territories on the five (5) days in question. The Carrier admits that this happened on September 29, 1984 but for "less than one hour...". This is never rebutted by the Organization. But even if this work on this day did not flow from the junior Signalman's assignment, it would reasonably fall under de minimus doctrine (See Fourth Division Awards 1486, 3168; Public Law Board 3840, Award 5 inter alia). On October 27 and November 3, 1984, the Carrier contends that the junior Signalman was "familiar with the cable locates he had made in this area...", implying that it was his territory. Whether it was or not is not sufficiently clarified on property by the Organization. On October 26, 1984 and November 10, 1984 the Carrier states that either the contractor was not working at all on the former date where the original Claim contended it (and the junior Signalman) were working, or the Claimant in question himself was working for MCI on the latter date. The issues with respect to who was working where and when are raised by the Carrier in its January 17, 1985 correspondence to the Organization. The Organization, on property, never really responds to this letter, in detail, with respect to these factual questions with the exception of the September 29, 1984 date cited above.

In view of the record as a whole the Board must conclude that the Organization, as moving party, has not sufficiently met the burden of proof in this Claim before the Board (Second Division Awards 5526, 6054; Fourth Division Awards 3379, 3482; Public Law Board 3696, Award 1).

Study of the Submission by the Carrier shows arguments not introduced during the handling of the case on property. By precedent such cannot be used by the Board here in its deliberations (Third Division Awards 22054, 25575, 26257; Fourth Division Awards 4112, 4136, 4137).

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 13th day of April 1989.