

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

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

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

Claim on behalf of Signal Maintainer R. E. Laude, headquartered at Batavia, N.Y., assigned territory, Section 12; assigned hours 7:00 a.m. to 3:30 p.m. Monday through Friday; assigned rest days Saturday, Sundays and holidays; for three (3) hours pay at his punitive rate of pay account of Carrier violated APPENDIX 'P,' paragraph 6 of the current Agreement, as amended, when at 5:30 a.m. on Wednesday, January 16, 1985 it used an employee who was not assigned to maintenance Section No. 12 to repair a broken gate at Town Line Road which is located on Maintenance Section No. 12. Carrier file SD-2225."

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.

Claimant is assigned as a Signal Maintainer at Batavia, N.Y. on Section No. 12 from Monday through Friday with assigned hours 7:00 a.m. to 3:30 p.m. The claim in dispute arose when Carrier used an employee not assigned to Section 12 to repair a broken gate at Town Line Road at 5:30 a.m. on Wednesday January 16, 1985. The Organization filed a claim on behalf of the employee for three (3) hours at the punitive rate of pay. Appendix P, paragraph 6 states:

"The Signal Maintainer assigned to that position in the Section involved will, if he has added his name in accordance with Item 5 above, be listed first on the calling list for his section. If more than one Signal Maintainer have the same responsibilities and territory, they will be listed in class seniority order."

The Organization argues that paragraph 6 had been violated when Carrier used an employee who was not assigned to Section No. 12 nor on the call list for that Section. It further maintains that the regularly assigned Signal Maintainer is the appropriate employee to be called in all cases of signal trouble on his assigned territory outside his assigned hours. In this case, Claimant was available to respond to perform the work but was not afforded the opportunity to do so. The Organization asserts that Claimant is entitled to a three (3) hour call at the punitive rate of pay.

Carrier, on the other hand, contends that paragraph 6 applies only to instances where overtime is required. In this case, since the emergency work was performed by Signal Maintainer Rose during his regular tour of duty, there was no contractual reason to apply the provisions of Appendix P.

Carrier further argues that an advertised bulletin designating a particular territory does not provide the employee with the contractual right to perform all work within that territory. The fact that Rose performed the work to avoid the delay in repairing the gate is further raised by Carrier with support from Item 9 of Appendix P that entitles Carrier to expedite a troubled call with an employee who is immediately available.

This Board has carefully reviewed the record of this case, including the Agreement language in question, as well as applicable Awards. The primary issue to be determined in this case is whether the work in dispute should have been done by the Claimant on overtime rather than by a Signal Maintainer doing work out of his section on regular duty. We have previously addressed this same issue between these same parties. In Third Division Award 27583 we found that the claim must fail for the following reason:

"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 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."

Nothing presented in this case persuades us that the finding in the above Award is erroneous. Thus, consistent with the time honored doctrine of stare decisis, this claim must also be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 18th day of May 1989.