

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company:

On behalf of Signal Maintainer B. E. Price for 3 hours pay at his punitive rate of pay account of Carrier violated the current agreement, particularly, Rule 61(a), when on November 4, 1984, it called the adjoining Signal Maintainer to repair the signal code line 'E', at or near Milford, Utah on the California. Carrier File 013-220-61."

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.

There is no dispute as to the relevant facts which reveal that the Carrier had an out-of-service code line on November 6, 1984. It made one phone call to the Claimant, who was first out for overtime. When no one responded to the phone call, the next person was called and responded.

The Organization mainly argues that the single call was not a reasonable effort to reach the Claimant. In advancing its contentions in this matter, it relies upon the following rules or portions thereof:

"Rule 11. CALLS. Employes notified or called to perform work before or after but not continuous with regular work period shall be allowed a minimum of three (3) hours compensation at the time and one-half rate for three

(3) hours of service or less, and if held on duty in excess of three (3) hours, time and one-half will be allowed on the minute basis. Time will commence at time required to report for duty and end when work is completed and employees return to designated point at home station."

"Rule 61. EMPLOYEES SUBJECT TO CALL.

(a) 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 of their regular point of call. When such employees desire to leave such point of call for a period of time in excess of two (2) hours, 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. Unless registered absent, the regular assignee will be called, except when unavailable due to rest requirements under the Hours of Service Act, as amended by Public Law 94-348."

The Carrier, for its part, also has a relatively straight forward argument. It principally states that the disruption of the code line constituted an emergency condition and, given that the Claimant did not respond to its telephone call, under its construction of Rule 11 and Rule 61, it properly could call the next person.

We have carefully considered the submissions of the parties and the supporting materials, including past Awards before arriving at our decision.

Rule 61 allows an absence from the point of call for a period up to two (2) hours. On the other hand, it has been held on many occasions that the Carrier has broad latitude in an emergency situation. Nonetheless, this latitude must be exercised within the bounds of prudence. The Carrier must make a reasonable effort to communicate with an employee. A phone call could have gone wrong for a number of reasons. One attempt to call, in the situation that we find in the record developed on the property, was not a reasonable effort to contact the Claimant.

With respect to the compensation requested, we hold, with more recent Second Division Awards that have dealt with the damages issue, that the appropriate rate of compensation for work not performed is at the pro rata, straight time rate.

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Award No. 27973
Docket No. SG-26955
89-3-86-3-44

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1989.