

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28099
Docket No. SG-27244
89-3-86-3-333

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 in behalf of R. E. Everetts, Jr. 037878, Maintainer C&S, 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-E-2(e) and APPENDIX 'P', when on March 10, 1985, they failed to call Maintainer Everetts in accordance with APPENDIX 'P' for a derailment at West bound Hump, Enola, PA, on the 'B' switch. Called was Signalman B. K. Shaw who is a junior employee on the calling list to R. E. Everetts.

March 10, 1985 5:00 A.M. - 5:00 P.M. 12 hours

B. Claim that since R. E. Everetts Jr., was not given the opportunity to perform the extra duty mentioned above, that he be paid eight (8) hours plus three (3) additional hours he would have been allowed for meals at the time and half rate of pay for his present position which is stated above." Carrier File SD-2229

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.

On Sunday March 10, 1985, a derailment occurred at Enola, Pennsylvania. A C&S Gang was called at 7:00 A.M. to make repairs. A Signalman Truck Operator for the gang, was assigned such overtime. The Organization contends that Claimant, whose assigned territory is where the derailment occurred, should have been called to perform the work.

In support of its claim, the Organization points to Appendix "P" and Rule 4-E-2(e) of the Agreement. Those Rules, in relevant part, read:

"6. 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.

* * *

8. Employees will be called from the appropriate list for work in the order in which their names appear on the list.

9. A reasonable effort will be made to comply with the procedure outlined above but this shall not be permitted to delay getting a qualified employee to report promptly at the point necessary to cope with the situation.

10. In the application of this understanding two calls will be made on the first six (6) employees whose names appear on the calling list. One call will be made to other individuals on the list."

Agreement Rule 4-E-2(e):

"(e) The meal periods provided for in paragraphs (c) and (d) of this rule shall be not less than thirty (30) minutes, shall be paid for by the Company, and shall not terminate the continuous work period; the employees shall be reimbursed for such meals, if the meals are not furnished by the Company. One (1) additional hours' pay at the time and one-half rate will be allowed for each meal period not provided."

The Organization maintains that these Rules require that a "... reasonable effort ..." be made to call the regular assigned signal maintainer. Here, Claimant was the regular assigned signal maintainer and senior to the employee called to perform overtime work on March 10, 1985. Thus, the Organization concludes that Claimant should have performed the work.

The Organization acknowledges that the derailment in this case constituted an emergency. However, the Organization points out that Appendix "P" specifically states that a "... reasonable effort ..." shall be made to call the regular assigned signal maintainer, which was not done in this case. Accordingly, the Organization asks that the claim be sustained.

Carrier, on the other hand, asserts that it has not violated the Agreement here. It argues that it has the right to determine the equipment to be used and the manner in which the work is to be performed. Here, Carrier insists that a gang with the proper equipment was called to perform the necessary work. It maintains that gang work - not maintainer's work was involved and therefore Claimant was not called for the overtime. For these reasons, it asks that the claim be denied.

A review of the Agreement convinces the Board that the claim must fail. Under the facts of this case, Carrier determined that the derailment was of such a serious nature to require a C&S gang to make the repairs. Appendix "P" specifies the procedure for calling C&S Department employees for trouble involving Maintainer's work outside their regular working hours. However, there is no evidence provided by the Organization that the work in this case is the type of work usually performed by Claimant. As a Maintainer, Claimant works alone performing his work in an assigned territory. On this dispute, a gang was required to perform the needed work. Thus, the Rules cited by the Organization in this case were not violated by Carrier. Accordingly, and for the foregoing reasons, the claim must fail.

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 11th day of September 1989.