

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 R. E. Laude, Signal Maintainer, headquartered at Batavia, N.Y., assigned territory Section 12; assigned hours 7:00 a.m. - 3:30 p.m. Monday through Friday; assigned rest days Saturdays, Sundays and holidays; for three (3) hours at his punitive rate of pay account of Carrier violated APPENDIX 'P,' paragraph 6 of the current Agreement, as amended, when on Monday, February 4, 1985, at 4:30 p.m. it used another employee to repair signal trouble east of C.P. 429 which is located on the Section 12 maintenance territory." Carrier file SD-2224.

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 arose when Carrier used an employee not assigned to Section 12 to repair signal circuit trouble on Monday, February 4, 1985, at 4:30 P.M. The Organization filed a Claim on behalf of the employee for three (3) hours at the punitive rate of pay for Carrier's violation of Appendix "P", paragraph 6 of the applicable Agreement, which contains the procedure for calling maintainers outside their normal working hours. That Rule states:

"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."

The Organization argues that paragraph 6 had been violated when an employee not assigned to Section 12 performed the disputed work. It further maintains that since Claimant is regularly assigned to the Signal Maintainer's position in Section 12, he is the first employee to be called in cases of trouble calls on that territory. The Organization states that Carrier's position in relying on Paragraph 9 is without merit. Paragraph 9 states:

"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."

The Organization asserts that Carrier did not make "a reasonable effort" to comply with Appendix "P" in that no attempt was made to contact Claimant.

Carrier, on the other hand, argues that the build up of ice and snow on an inoperative switch would have delayed a train scheduled to arrive at 4:53 P.M. Since the C&S Trouble Desk only received the call at 4:20 P.M., Carrier assigned Maintainer Warren, who was on the property performing overtime work on his assignment. Because of the emergency situation, Carrier asserts the provisions of Paragraph 9 suspend the normal overtime calling procedure if it would "delay getting a qualified employee to report promptly at the point necessary to cope with the situation."

The Board has reviewed the entire record and concludes that the Claim must be denied. In view of the urgency of the situation, Carrier did not violate the Agreement when a qualified employee who was on the property and working nearby was called to clear the switch of ice and snow and avoid any delay to SP77Y. The switch malfunction in this case required immediate action in order to avoid delay. Numerous Awards of this Division have ruled that Carrier has broader latitude in dealing with this type of situation. Moreover, the language of Paragraph 9 clearly covers this situation.

In Third Division Award 27915, we previously addressed this same issue between the same parties. 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. Dever, Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1991.