

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (C&O):

On behalf of Signal Maintainer Working Independently
R. H. Bush:

(a) Carrier violated the parties' Schedule Agreement, as amended, particularly Call Rule 25, Addendum 3 and Rule 43 1/2 (a), when on or about Saturday, October 17, 1987, it called or otherwise allowed vacationing Signal Maintainer Working Independently G. L. Baker to perform work of pulling the power on Carrier's 440 volt signal line between Mile Post 174.5 and Mile Post 180.3 at Twelve Mile, Indiana and Fulton, Indiana.

(b) As a consequence of the above violation, Carrier should now be required to compensate Signal Maintainer Working Independently R. H. Bush, ID 280170, five (5) hours and 20 minutes at his overtime rate of pay, which is the amount of time used by Baker, due to a loss of earning and work opportunities." G. C. File 87-56-CD. Carrier file 15-25 (88-14).

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 basic facts of this case are set forth as follows: On Saturday, October 17, 1987, Signal Maintainer G.L. Baker headquartered at Peru, Indiana pulled the main fuses on the 440 line at Twelve Mile, Indiana, and Fulton, Indiana, Mile Post 174.5 to 180.3. The work was performed in connection with the M&M Construction Company to remove T&T line from the right of way. Since

October 17, 1987, was Signal Maintainer G.L. Baker's first rest day and said rest day preceded his scheduled vacation period, the Organization charged that Carrier violated Addendum 3 of Rule 25 of the Scheduled Agreement. Rule 25 including Addendum 3 reads as follows:

"RULE 25 - WORK OUTSIDE OF ASSIGNED HOURS

Employees assigned to or filling vacancies on Independent Signal Maintainer positions will notify the person designated by the management where they may be called and will respond promptly when called. If they are needed for work outside of regularly assigned hours, the Independent Signal Maintainer on whose territory the work is required will be called first. If not available, the Leading Signal Maintainer and Signal Maintainers assigned to a Signal Maintenance Unit on the Territory where the work is required will be called in order of their seniority as Signalmen. If these are not available, another qualified employee will be called. When an Independent Signal Maintainer knows that he will not be available for calls on his days off duty, he will notify the designated person and there will be no obligation to attempt to call him. This will not apply to monthly (sic) rated Signal Inspectors covered by Rule 54."

"ADDENDUM 3

Availability of signal employees on rest days adjoining or falling between work weeks that the employee is on vacation:

1. Signal Department employees will not be considered as available for service on rest days preceding the vacation period.
2. Signal Department employees will not be considered available on rest days which occur between two or more weeks of continuous vacation.
3. Signal Department employees will be considered available for call on rest days following the last work day on vacation unless the employee has notified his supervisor that he will not be available on those days pursuant to Rule 25 of the Schedule Agreement."

Specifically, the Organization contends that since Item 2 of Addendum 3 explicitly states that Signal Department Employees will not be considered as available for service on rest days preceding the vacation period, Mr. Baker

should not have performed said work on October 17, 1987. Instead it argues that Carrier should have observed the procedures set forth in Rule 25 with respect to work outside of assigned hours. It asserts that Carrier under the prevailing staffing circumstances circa October 17, 1987, was obligated to call another qualified employee and accordingly, consistent with on situs past practice, this meant a maintainer from an adjoining territory.

Carrier argues that Mr. Baker was not called to perform this work by management and thus the Company cannot be held accountable for Mr. Baker's unilateral actions. It contends that Claimant was not the next available maintainer, since another maintainer at Peru, Indiana, worked the territory adjacent to Mr. Baker's. It points out that Addendum 3 does not prohibit the assigned maintainer from performing service on a rest day preceding his vacation period and notes that under Rule 17, the regular employee must be used to perform work on a day which is not part of any assignment when there are no unassigned employees available. It also avers that under the decisional authority of the Board, an employer should not be held accountable when an employee voluntarily performs work without direction or control by the Carrier. (See Third Division Awards 12951, 7793, 12949)

In considering this case, the Board concurs with the Organization's position that Rule 25, including Addendum 3, specifically prohibits the consideration of Signal Department employees for service on rest days preceding said employee's vacation period. However, the record of this case fails to indicate that the Carrier was knowledgeable of Mr. Baker's actions in performing said work on October 17, 1987. In fact the record leans toward the premises that Mr. Baker may have volunteered his services.


The Agreement must be adhered to by both parties, i.e., the Carrier is restricted in requiring employees to be available or responding to calls. On the other hand the employees are also obligated to adhere to Agreement provisions by not voluntarily providing service without Carrier's knowledge. Accordingly, the claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November 1991.