

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
(
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (SPTC.WL):

Claim on behalf of D. H. Smith, for payment of two (2) hours and forty (40) minutes pay at his punitive rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, Rule 19, when it failed to call him on January 11, 1989." Carrier file SIG-125-215. BRS file Case No. 7904 SPTC.WL.

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 key events leading to this Claim arose on January 11, 1989, after the Claimant (a member of the Oakland Signal Gang) had completed a total of twelve (12) hours of service at 7:30 P.M. Two hours later at 9:30 P.M., the Carrier called two Signal Maintainers to repair a broken railroad crossing gate. The question at issue is whether the Carrier properly applied the Hours of Service Act ("HOS"). We find that it did not.

The Carrier, in its denial, mainly relied upon Part 222 of the HOS which reads:

"Even where an extraordinary event or combination of events occurs which, by itself, would be sufficient to permit service, the Carrier must still employ due diligence to avoid or limit such excess service. The burden of proof rests with the

Carrier to establish that excess service could not have been avoided."

We find, given the particular circumstances of this case, that the Carrier's reliance upon the quoted part of HOS above is misplaced and taken out of context. The Federal Railroad Administration ("FRA") has determined that a broken or malfunctioning crossing protection is an emergency. In cases of emergency, pursuant to the FRA's Interpretation, employees may be permitted to be and remain on duty for four (4) additional hours in any period of twenty-four (24) consecutive hours. Accordingly, because the proper sequence for trouble calls is to call the assigned Signal Maintainer in the position where the trouble occurred, the Claimant should have been called in this case to perform the repair work.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dext - Executive Secretary


Dated at Chicago, Illinois, this 7th day of May 1992.

CARRIER MEMBERS' DISSENT
TO
AWARD 29214, DOCKET SG-29411
(Referee Muessig)


The Majority finds that the quoted portion of the Hours of Service Act Regulations relied upon by the Carrier to be "misplaced and taken out of context." The basis for its conclusion is neither explained nor explainable.

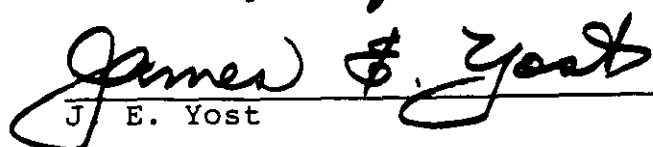
We dissent.


M. W. Fingerhut


R. L. Hicks


M. C. Lesnik


P. V. Varga


J. E. Yost