

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29491  
Docket No. SG-29614  
93-3-90-3-612

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Southern Railway System

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen of the Southern Railway Systems Railroad:

Claim on behalf of Signalmen F. H. Lett, assigned to Signal Gang #589, assigned work days Monday thru Thursday, 10 hours each day, for the following:

(1) Carrier violated the Signalmen's Agreement, particularly Rule 41 and Rule 20, when they failed or refused to allow Signalman F. H. Lett to report to his bulletined assigned position on Signal Gang 589 effective September 25, 1989 as shown on bulletin SS-89-19, and did not pay him for the extra expense and travel time he incurred while working away from his bulletined assigned position for approximately 14 days.

(2) Carrier (sic) now be required to compensate Signalman F. H. Lett for 5 hours travel time at his straight time rate of pay or \$70.65 and reimburse him for additional mileage he had to drive while working off of his assignment in the amount of 300 miles at 25 cents per mile or \$75.00. Claim is to be in addition to any other expense or travel time he has been paid for this additional travel time and mileage expense he incurred while working off of his bulletined assigned position." General Chairman's File No. SR-3789. Carrier's File No. SG-ATLA 89-29. BRS Case No. 8209-SOU.

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 September 13, 1989 the Carrier issued Bulletin SS-89-19 by which it assigned the Claimant to the position of Temporary Signaller, Gang 589, effective September 25, 1989. On November 20, 1989 the instant claim was filed by the General Chairman at Danville, Kentucky on grounds that "...for some reason (the Claimant) was not allowed to report to his bulletined position (on Gang 589) until October 9, 1989, (which was) some 14 days (after) the effective date of the assignment." According to the claim the Claimant suffered hardships and expenses which he would not have suffered had he worked the position to which he had bid, and to which he had been assigned, effective September 25, 1989. The claim requested, therefore, relief for travel time and mileage for the time the Claimant had worked "...away from his bulletined assigned position" in late September and early October of 1989.

According to the Organization the Carrier had violated Rules 20 and 41 of the operant Agreement when it had not assigned the Claimant to Gang 589 on the effective date of his assignment to that position. The Rules at bar read as follows, in pertinent part:

"Rule 20

(a) Assignments to new positions or to fill vacancies will be made after bulletin notice has been posted for a period of ten (10) days at the headquarters of the gangs and sent to other employees entitled to consideration in filling the positions (a copy will also be furnished the General Chairman) during which time employees may file their applications with the official whose name appears on the bulletin. The appointment will be made before the expiration of twenty (20) days from the date the bulletin is posted, and the name of the employee selected will then be announced....

\* \* \* \* \*

(c) Transfer of successful applicants to new assignments will be arranged for, unless prevented by special circumstances, within twenty (20) days after close of the bulletin. Employee failing to go to new positions within this period, unless prevented by illness, shall take leave of absence, and failing to do so may thereafter place himself only by bidding on other vacancies.

Rule 41

Except as provided in Rules 45 and 49, when employees are sent away from their assigned station or section on company business, they will be allowed actual necessary expenses.

This rule shall not apply to signal maintainers and assistants working on their assigned section or territory, except when sent away from automatic block territory; nor to employees assigned to camp cars when they return to camp cars for meals or when meals are taken to them; nor shall it apply in cases where meals and lodging are provided by the Company."

The Manager of Labor Relations at Roanoke, Virginia, denied the claim on grounds that at the time the Claimant had been awarded the position on Gang 589 he had been working on Gang 583 on a project in Harrisonburg, Virginia. And "...due to the fact (that) Gang 583 had only a foreman and four men, it was necessary to hold (the Claimant) until the project they were working on was completed." The Carrier argues that it was permissible to hold the Claimant on Gang 583 under Rule 20(c) and that he was held only four working days beyond September 29, 1989. The latter was 20 days from the September 9, 1989 date of the close of the bulletin in question.

The argument by the Carrier in this case is that the intent of Rule 20(c) permitted it to hold the Claimant in Gang 583 beyond September 29, 1989. Evidently, the parties made allowance for exceptions to the application of the twenty (20) day provision in this Rule as the language at Rule 20(c) clearly shows. The only issue is whether the "special circumstances" as outlined by the Carrier represent reasonable application of this exception. The Carrier states that a project was started and needed the presence of the Claimant, as well as others, for completion. The Organization's response to that, best outlined in its appeal letter of June 21, 1990, is that:

"There were no special circumstances as you seem to allege because the Carrier has the sole right to hire employees to fill vacancies and they chose not to do this. In any event if there had been special circumstances that would have allowed you to hold the Claimant on signal gang 583, the fact remains that on September 25, 1989 it was no longer Claimant's assignment and he should be reimbursed and paid for travel because he was working off of his assignment."

The Board notes that the Organization does not dispute the fact that a project was started by Gang 583, that a foreman and four Signalmen were needed to complete it by October 5, 1989, nor that the Claimant was one of those Signalmen.

While it is true that the Carrier could possibly have found a replacement for the Claimant on that Gang for the several days in question beyond September 29, 1989, there is no information provided by the Organization, which would have been a minimal requirement of its burden of proof as moving party to this claim, that such other Signal personnel were even available at the time in question. Nor can the Board conclude that even if other Signalmen were available, that it would have been a requirement of the Carrier to have gone to them in this particular instance to replace the Claimant. In view of the facts of record before the Board in this case the Carrier's interpretation of Rule 20(c) of the Agreement was not unreasonable and the claim will 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 21st day of January 1993.