

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29599
Docket No. SG-30103
93-3-91-3-570

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk and Western Railway Company:

Claim is filed on behalf of O.N. Aker, Signal Maintainer, Pulaski, Virginia; assigned hours 7 a.m. to 4 p.m. Mondays through Fridays; meal period 12 noon to 1 p.m.; rest days Saturdays and Sundays, that:

- A. Carrier violated the rules of the Signalmen's Agreement, in particular Memorandum of Agreement Establishing Regional Signal Maintenance Force effective February 1, 1984, when, on Wednesday, April 25, 1990, from 7 a.m. to 4 p.m., Carrier instructed Mr. L. O. Grinnell III, Signal Maintainer, Regional Signal Maintenance Force, Radford, Virginia, to suspend work on his regular assignment and make route-locking and time-locking tests at Radford as required by the Federal Railroad Administration and Carrier.
- B. Carrier now pay Mr. Aker, the adjoining signal maintainer, eight hours at the overtime rate of pay for the violation cited in Part A. Carrier File SG-ROAN-90-13. G.C. File No. SG-ROAN-90-13. BRS Case No. 8475.N&W."

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 employee 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 Claim alleges a violation of the Agreement when Carrier assigned a Regional Signal Maintenance employee to work with two other employees to perform certain signal tests required by the FRA and the Carrier. The Organization cites the following portion of a February 1, 1984 Memorandum of Agreement in support of its Claim:

"Employees assigned to positions on Regional Signal Maintenance Forces will perform assigned duties over the entire geographical seniority region. These employees will perform signal maintenance on the Region to which assigned with the exception of tests and inspections as required by the FRA or the Carrier." (Underlining supplied)

In resolving this dispute, we have confined ourselves, as we must, to considering only those matters which were raised by the parties in the record they developed on the property. Therefore, we have not considered any information or argument presented for the first time in the parties' Submissions to the Board.

On the record before us, we conclude that the Organization has established a prima facie Claim. While it maintained that the regional employee only assisted the local employees in the testing, the Carrier provided no support for making any distinction between assisting in the work and performing the work. In addition, Carrier did not assert full employment or lack of actual damages on the property. Its only defense regarding damages was the contention that the punitive rate of pay claimed was not appropriate, but it offered no support for the contention. It also noted that the testing took only three hours instead of the eight hours claimed. The Organization did not challenge the three hour assertion.

We find, therefore, that Carrier's actions did violate the Agreement and that Claimant should be compensated with three hours pay at the punitive rate.

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A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.