

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29820
Docket No. SG-29626
93-3-90-3-613

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
(
(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago Northwestern Transportation Company (CNWT):

Claim of the Local Committee #130, Chicago & North Western Trans. Co., Brotherhood of Railroad Signalmen, that carrier violated the current Signalmen's Agreement, as amended;

(a) On Sept. 26, 1989 the carrier violated the current Signalmen's agreement, in particular Rule 16 concerning check out and check in for Signal maintainers, and Rule 15 (b) when carrier made Signal Crew members stand by for emergency duty, Sept. 26, 1989 at 12:00 a.m.

(b) Carrier (sic) now be required to compensate the following signalmen at their rates of pay for 8 hrs. pay for standing-by from Sept. 26, 12:00 a.m. to Sept. 26, 7 a.m.

D. Pantaleo; R. Bockin, and S. Drelich, this includes 1 hr. prep time per Rule 15b.

Mr. A. Lundquist is to receive 3 hrs. and 40 minutes as he showed up to work, then returned home to be on stand-by, as he wasn't told anything else at the time, he is to receive 4 hrs. and 20 minutes as stand-by time. This is the Crystal Lake Crew.

(b) Carrier (sic) now be required to compensate the following members of the Signal Crew headquartered at Des Plaines;

P. Niziolek, S. Stanbery, R. Stipek, and J. Phillips, time and conditions are the same as in paragraph (b) above except no 2.40 call." Gen'l. Chmn's. File No. C&NWT-S-AV-11. Carrier's File No. 79-90-5. BRS Case No. 8046.

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 employe 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.

A claim was filed on October 9, 1989 on grounds that there had been a violation of Rules 15 and 16 of the Signalmen's agreement on September 26, 1989. According to the claim signal crews were advised by the Crystal Lake Roadmaster at 2:45 PM on September 25, 1989 to "...tie up and be fully rested as per hours of service" and be "...on stand-by and be prepared to report to work" at 12:00 AM on September 26, 1989. According to the claim no call was made to take any of the men off stand-by and one of the Signalmen, R. Lundquist, reported to the signal shop but his "overtime was denied."

In denying the claim the Division Manager states the following:

"...All (of the Claimants) except Mr. Lundquist were contacted around 5:00 PM on September 25 and told they would not be needed for emergency work and to report at their regular time on September 26.

Mr. Lundquist could not be reached as he left no phone number where he could be reached.

...Rule 15(b) refers to employees working outside their assigned hours, and these employees did not work. Rule 16 states

employees need to be available for emergency, which these employees were, except for Mr. Lundquist."

In response to this denial the Local Chairman denies that the men were notified at 5:00 PM by supervision: "no call was made to take above men off of stand-by." If they were notified, the Chairman asks: "How were these men notified? Who notified them? Where were they reached at?" The Organization provides the company with statements by the Claimants to the effect that they had not been contacted. One of them, for example, who was crew foreman at Des Plaines, states that:

"...I went home early. My normal tie up time is 3:30 PM and I went home at 3:00 PM. Then I ate an early supper. Went to bed around 8:00 PM and I didn't get a call. I changed my whole evening so I could be of some good use to the company..."

Another of the Claimants states that he was "...told to go home and be ready to perform work at 12:00 AM. I was never notified that I would not be needed".

The Rules at bar in this case are the following:

"Rule 15 - WORK OUTSIDE REGULAR HOURS

- (a) Called to Report For Work Outside Regular Hours: Employees released from duty and called to perform work outside of and not continuous with regular working hours will be paid a minimum allowance of two hours and forty minutes at rate and one-half. If held longer than two hours and forty minutes they will be paid at rate and one-half, computed on the actual minute basis. Time of employees call will begin at time called and will end when released at designated headquarters, unless release is accepted at another point, except that time in excess of one hour from time called to time reporting at designated headquarters or other agreed to point will not be included.
- (b) Notified to Work Outside Regular Hours: Employees notified prior to completion of their assignment to report for work

outside of regular working hours will be paid a minimum allowance of two hours at rate and one-half. If held longer than two hours they will be paid at rate and one-half, computed on the actual minute basis. Time of employees notified to report for work outside regular hours of assignment will begin one hour prior to time required to report for work and will end when released at designated headquarters, unless release is accepted at another point.

- (c) An employee called or notified to report less than two hours prior to regular starting time will be paid at rate and one-half from time required to report for duty until regular starting time, with a minimum of one hour.
- (d) When overtime service is required of a part of a group of employees who work together, the senior qualified available employees of the class involved shall have preference to such overtime if they so desire.

Example: Crew 1 has fifteen men in it. Five are engaged, for instance, in tying in line wire. If overtime on such work is necessary, say, of two employees, the senior of the five (group) will be given preference. If entire five men are needed, the five will work the overtime regardless of seniority in the crew of fifteen men as a whole. When there is planned overtime work or service to be performed on rest days, the senior man of the class involved will be given preference to perform such overtime service. This Section (d) and example apply to crew and signal shop.

Rule 16 - SUBJECT TO CALL:

- (a) Signal Maintainers recognize the possibility of emergencies in the operation of the railroad, and will notify the person designated by the

management of regular point of call. When such employees desire to leave such point of call for a period of time in excess of three (3) hours, they will notify the person designated by the management that they will be absent, about when they will return, and, when possible, where they may be found. Unless registered absent, the regular assignees will be called.

- (b) When an employee assigned to a point where two or more shifts are established is absent or when supplementary service is required and there are no qualified relief men available, assignee then on duty will continue on the work until same is completed or until relieved by assignee of a subsequent shift, but in no case will he be worked in excess of sixteen consecutive hours. Regular assignee may relinquish right to additional work referred to herein provided a qualified Signalman is available."

A review of the record shows that on April 12, 1990, the Signal Supervisor at Des Plaines wrote to the Director of Labor Relations in an attempt to clarify the facts on this case. In that letter the Signal Supervisor states that he was "...called by (his) manager...and told to send (his) crews home in case they were needed." He then states that he called his "...Des Plaines crew and told them to 'tie-up' and start their rest." He also told them of damage to the west line and that they "might be needed". He said that he heard the foremen on the phone state that they would tie up and come in when rested but was concerned about this miscommunication. But later he "...called the foreman and got him at his headquarters and asked him if he got the message right and if he was successful in telling the men not to report for work. He told me he had contacted everyone except Mr. Lundquist."

First of all, it is clear that the Claimants were told to tie up early in case of emergency work and that they were paid for doing this. As the General Chairman advises the Carrier in his May 7, 1990 correspondence, the Carrier would not have sent men home early and paid them just so they could only have gotten their rest. They needed rest, and an early tie up, for something. Evidently, this meant to be on stand-by until needed. It simply could not have meant anything else. So the Claimants remained on stand-by.

Their point is that they were never told that they were taken off stand-by. According to the Signal Supervisor, the Claimants were told not to remain on stand-by a "foreman" who remains, however, unidentified. In view of the record as a whole, and the considerable corroborating evidence presented by the Claimants, their position on the matter of whether they had been contacted or not is more credible and the Board must rule accordingly. The Organization, as moving party, has sufficiently met its burden of proof in this case (See Second Division 5526, 6054; Third Division 22180, 25575) and the Board is not warranted in dismissing the instant claims on basis of irreconcilable differences of fact (See Third Division 20053, 23834, 26679; Fourth Division 3201). The issue surrounding Claimant Lundquist remains an anomaly. However, since according to the Signal Supervisor, there was some confusion with respect to whether the men were told to, and not to, come in to work or just to "...tie up and start their rest", as he put it, apparently all had understood that they were to remain on stand-by until contacted except Lundquist. He must have understood that he was to report at mid-night unless contacted to the contrary otherwise, evidently, he would not have shown up for work at that time. Supervision stated that they tried to contact him without success. That may or may not be correct since evidence suggests that supervision had not contacted any of the other Claimants, whose correct telephone numbers were available. Clearly, the genesis of this case centers on communication problems which the Signal Supervisor had with those who were reporting to him.

In view of violation of the Rules at bar the Carrier is directed to pay the claims as requested.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 29th day of September 1993.

CARRIER MEMBERS' DISSENT
TO
AWARD 29820, DOCKET SG-29626
(Referee Suntrup)

There are two facts which are undisputed in this record. First, that both the Des Plaines and the Crystal Lake crews were relieved from their regular assignments early on September 25, 1989. Second, that all of the Claimants, except one, Mr. Lundquist, who could not be subsequently contacted, DID NOT REPORT for any service at midnight on September 25, 1989.

Claimants were initially released early for rest required by the Hours of Service Act so that they could be available for use at a derailment after midnight. The possibility of being called for emergency work is recognized by Rule 16 and does not require any special notice. All that the Carrier did was to arrange its forces so that they, the crews, could be expediently employed if needed.

As is noted by the Majority on page 5 of the Award, there was subsequent communication with these crews at approximately 5:00 PM. Despite the rhetorical questions quoted at page 3 of the Award, the signal supervisor contacted the Crystal Lake crew foreman at his headquarters at approximately 5:00 PM with instructions to notify the crew NOT to come in. Subsequently, the signal supervisor was advised by the Crystal Lake foreman of his, the foreman's, inability to contact Mr. Lundquist. Statements were also submitted from members of the Des Plaines crew that initially they were to "be ready to perform work at 12:00 AM."

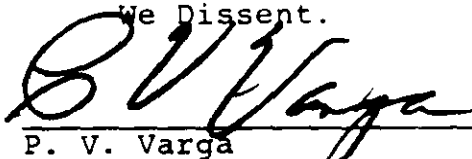
If the foregoing was the understanding of both crews when released at 2:45 PM, then why is it that only Mr. Lundquist, the

only individual not subsequently contacted, reported at midnight. Claimants collective failure to report at midnight substantiates that there was a change in their instructions. The Majority quotes at page 5 of the Award that the men were told "not to report to work." Such factual instructions should have resulted in the denial of this claim. That "supervision" did not call these "other Claimants" was because the communication was made through the crew foremen who are not considered as supervisors, i.e., management.


The handling of Claimant Lundquist is no "anomaly." Foreman Pantaleo was instructed to leave a note for Mr. Lundquist to stay at the shop and to make a work report to pay Mr. Lundquist for his time on the property. Claimant Lundquist failed to comply with the instructions.


Finally, Rule 15(b) provides a "minimum allowance" and compensation on the actual minute basis, "if held longer than two hours." (Emphasis added) None of the Claimants met the requirement of the rules. Claimants, between midnight and 7:00 AM, performed no compensable service and are being enriched by this Award. Award 29820 does not rest on the facts but on the Majority's assumption.

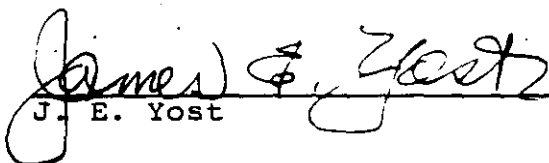
We Dissent.


P. V. Varga


M. W. Fingerhut


R. L. Hicks


M. C. Lesnik


J. E. Yost