

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30482
Docket No. SG-30285
94-3-92-3-14

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 Southern Railway Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk Southern Corporation (SOU) Railroad:

Claim on behalf of C. B. Wham, for payment of six and a half (6.5) hours pay, at his punitive rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, Rules 4 and 49, when it used Signal Maintainer C. A. Metcalf to repair a signal failure on October 27th and 28th, 1990, on his assigned territory."

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.

According to the Organization, Claimant held himself available the entire day, October 27, 1990, for call except for a brief period between 7:00 p.m. and 8:00 p.m. when he stepped out to get something to eat. It is undisputed that a signal failure occurred on Claimant's territory and that Carrier attempted to call him, without success, at two different telephone numbers during the time he was out eating.

Carrier does not dispute that Claimant was entitled to first call for signal work on his territory. Its position is that Claimant made himself unavailable for the emergency signal work that arose. Accordingly, it was appropriate for Carrier to contact the signal maintainer from the adjacent territory, as it did, to perform the repair work.

If the foregoing factual information was all that was developed between the parties during their handling of this matter on the property, our disposition of the Claim would be straightforward. However, in its last correspondence to Carrier, more than four months prior to serving its Notice of Intent to file the dispute with this Division, the Organization alleged that the adjacent signal maintainer was not called by Carrier until 8:30 P.M., more than 30 minutes after Claimant returned home. Although Carrier included this letter with its Ex-Parte Submission, as part of the on-property record, it did not respond to the Organization's allegations in any way. The Organization's allegations, therefore, stand unrefuted and may be considered as material fact.

This Claim, therefore, becomes very similar to the situation resolved in Third Division Award 17062. In that case, the Board found that another call to the Claimant was warranted immediately before calling the nearest signal maintainer where Carrier waited thirty minutes after first attempting to reach that Claimant. The same rationale applies here. Since Carrier waited some thirty minutes before contacting the adjacent maintainer, it cannot be said that Claimant continued to be unavailable in view of his unrefuted assertion that he was again waiting at home. Under these unique circumstances, Claimant was entitled to another call before Carrier turned to the adjacent maintainer. On these facts, Carrier did not satisfy its Agreement obligation when it did not make a reasonable effort to again contact Claimant.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

Form 1
Page 3

Award No. 30482
Docket No. SG-30285
94-3-92-3-14

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.