

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30599
Docket No. SG-31070
94-3-93-3-23

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim on behalf of T.F. Drupieski for payment of seven hours at the overtime rate on account Carrier violated the current Signalmen's Agreement, particularly Appendix P, when it assigned an assistant supervisor on September 18, 1991, to perform work reserved to employees covered under the agreement."

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.

Claimant held a position as Maintainer Test on the Carrier's Harrisburg Division, tour of duty 7:00 a.m. to 3:00 p.m. with Saturday and Sunday rest days. On September 18, 1991, the Claimant worked his regular eight-hour tour plus two hours of overtime.

At 11:13 that evening, a trouble call occurred due to a switch failure at West Rock, on the Port Road Secondary. Claimant was on the overtime call list maintained pursuant to Appendix "P" of the Agreement, however his name bore a notation indicating that a two-hour call was required.

The record is not in dispute. The Carrier did not call the claimant to repair the switch failure at West Rock. Instead the Carrier used an employee not covered by the Agreement to make the necessary repairs. Appendix P of the Agreement specifies how employees are to be called. There is no evidence that the Carrier followed these procedures in order to find an employee covered by the Agreement to make the repairs.

In Third Division Award 28231, involving the same parties and a similar incident, the Board held:

"This Board finds that not only did Carrier fail to comply with the requirements of the calling procedure but a Supervisor not covered by the Agreement is not a 'qualified employee' within the meanings of that term in Item 9.

With regard to damages for the proven violation of Appendix P and the Scope Rule, we find no reason to depart from prior holdings of this Board that the appropriate remedy is a minimum three (3) hour call at straight time rates. See Third Division Awards 26340 and 27606."

We find no reason to change prior holdings of the Board. We will sustain the claim, to the extent Claimant will be paid 3 hours at the straight time rate of pay.

AWARD

Claim sustained in accordance with the Findings.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 2nd day of December 1994.