

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31154
Docket No. SG-31244
95-3-93-3-258

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

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

STATEMENT OF CLAIM"

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation:

Claim on behalf of R.E. Rice for payment of three hours at the overtime rate, on account Carrier violated the current Signalmen's Agreement, particularly Appendix P, when it failed to call the Claimant for overtime service on November 11, 1991. Carrier's File No. SG-441. General Chairman's File No. RM2288-80-692. BRS Case No. 8908-CR."

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.

On November 11, 1991, a Signal Maintainer was called for overtime work on his regular work section. After he completed the overtime assignment on his own work section and while he was still on duty and on the Carrier's property, he was subsequently utilized to perform additional Maintainer's service on the work section which is normally maintained by Claimant. Claimant was not called to perform the overtime work on his own work section and this claim is the result of Carrier's failure to call Claimant. There is no disagreement between the parties relative to this fact situation.

The applicable agreement involved in this situation is APPENDIX "P" which provides a procedure for calling signal department employees for work outside of their regular working hours. Of particular concern in this dispute are paragraphs numbered 6, 8 and 9 of said APPENDIX "P" which read as follows:

"AGREEMENT DATED NOVEMBER 16, 1978 BETWEEN CONSOLIDATED RAIL CORPORATION AND BROTHERHOOD OF RAILROAD SIGNALMEN PROVIDING A PROCEDURE FOR CALLING C&S DEPARTMENT EMPLOYEES FOR TROUBLE INVOLVING MAINTAINER'S WORK OUTSIDE THEIR REGULAR WORKING HOURS.

* * *

6. The Signal Maintainer assigned to that position in the section involved will, if he has added his name in accordance with Item 5 above, be listed first on the calling list for his section. If more than one Signal Maintainer have the same responsibilities and territory, they will be listed in class seniority order.

* * *

8. Employees will be called from the appropriate list for work in the order in which their names appear on the list.
9. A reasonable effort will be made to comply with the procedure outlined above but this shall not be permitted to delay getting a qualified employee to report promptly at the point necessary to cope with the situation."

The position of the Organization is that Claimant was properly identified on the calling list for his section, that he was available for call and that he was not called by Carrier for overtime work in his work section.

The Carrier argued that the Maintainer who had been previously called for overtime work on his own work section was properly continued on duty to perform the necessary service on Claimant's work section because the nature and location of the required work dictated immediate action and the use of the employee already on duty was sanctioned by the provisions of Paragraph 9 of APPENDIX "P." In any event, Carrier contends that the claim for payment at the punitive rate is excessive inasmuch as Claimant performed no actual overtime service.

The parties to this dispute are not strangers to applications and/or mis-applications of this APPENDIX "P." In the instant case, Carrier argued that the work which was required to be performed in Claimant's work section constituted "an urgent situation . . . requiring prompt attention." However, there is not one word of evidence or proof to substantiate the contention of urgency. Additionally, there is nothing in the record to indicate that any effort was made to attempt to contact Claimant to ascertain his ability to perform the required work as expeditiously as the Maintainer from the adjacent territory. It is not unreasonable to expect that, if the negotiated agreement is to retain some semblance of meaning, there must be some minimal effort made in this regard. If, after such an effort is made and it is determined that a prompt report would not be possible and that the situation demanded a more prompt response "to cope with the situation," then the Board may well take a different position.

On the basis of this record, there is no evidence to support the contention of urgency; there is no indication that the provisions of Paragraph 9 of APPENDIX "P" were complied with by Carrier; there is evidence that Claimant's rights under APPENDIX "P" were violated.

As to the remedy sought, the Board has, more often than not, ruled on this property with these same parties that proper payment for a violation such as that which exists here should be at the straight time rate rather than at the punitive rate of pay. Third Division Awards 26340, 27606, 28231 and 29349 each reached that conclusion when deciding cases which involved APPENDIX "P." The Board in this case finds no reason to disagree with those decisions. Therefore, this claim is sustained for three hours pay at the straight time rate.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.