

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31240
Docket No. SG-31705
95-3-93-3-746

The Third Division consisted of the regular members of and in addition Referee Jacob Seidenberg 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 (BRS) on the Consolidated Rail Corporation (CONRAIL):

Claim on behalf of J.T. Brewer for payment at time and one half, on account carrier violated the current Signalmen's Agreement, particularly Appendix 'P', when it failed to assign the Claimant to perform overtime service on his assigned section on October 14, 1991."

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 dispute devolves upon the proper interpretation and application of Appendix 'P' which provides a procedure for calling C&S Department employees for trouble involving Maintainer's work outside their regular working hours. Appendix "P" states in its relevant parts:

"5. Qualified employees may have their names added to or removed from the list at their request if written notification is given to the Supervisor C&S forty eight (48) hours in advance. Such employees must be able to report to the headquarters of the territory within one hour to call in the territory in which they have indicated or desire to be called.

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 should not be permitted to delay getting a qualified employee to report at the point necessary to cope with the situation."

The Claimant Signal Maintainer was headquartered at Woodbury, New Jersey. He resided at Conowingo, Maryland. On October 14, 1991 at 10:15 PM there was a malfunction of a crossing gate at Wenonah, New Jersey. The Claimant was not called for this job. Instead Signal Maintainer Brogan, third on the list, was dispatched at 10:30 P.M. to the job location and completed the work at 1:00 A.M.

The Organization states that the Claimant lived fifty-four miles from his Woodbury, New Jersey headquarters and was fifty-seven miles from the location of the defective grade crossing.

The Claimant contended that he should have been called for the October 14th job. He asserts that the Carrier was in error in stating that he was more than two hours away from his headquarters.

The Organization asserts that the overtime work occurred in the Claimant's territory and he was first out on the list, yet the Carrier made no effort to call him for the work. The Organization adds that although the Carrier denominated the situation as an emergency, Section 9 provides in Appendix "P" that there should be no delay in getting a qualified employee to respond promptly. It also requires a reasonable effort should be made to comply with the regular procedure. The Organization maintains that the Carrier presented no evidence to show that if the Carrier had called the Claimant the respond to the trouble, it would have been delayed. In the absence of such evidence, it was obligatory for the Carrier to call the claimant.

The Organization states the Carrier is in error that Appendix "P" requires the employee be able to respond to trouble calls within one hour. Section 5 does not restrict an employee's right to overtime based on the travel time to the work location. All that this Section requires is that he be able to report to the headquarters within one hour to have his name included on the list. The travel time pertains to an employee getting his name on the overtime list. It does not pertain to the travel time necessary to be able to get to the job. The Organization states that since the Claimant had his name on this list, the Carrier should have called him for the overtime work on October 14, 1991. Since the Carrier did not call the Claimant for the overtime work in his territory, the Carrier should compensate the Claimant for his loss by the payment of three and a half hours at the overtime rate.

The Carrier denied that it violated Appendix "P" because the Claimant lived in excess of two hours driving time from the headquarters and since the malfunctioning of a gate crossing represented an emergency that had to be promptly attended. The Carrier stated the Organization did not dispute that the Claimant lived in excess of two hours driving time from headquarters and therefore he was not contractually entitled to be called for this overtime work.

The Carrier states the malfunctioning of a crossing gate represents a hazardous condition that demanded immediate correction. It adds when a situation occurs outside of working hours, that can be handled in a reasonable time, it may not demand immediate attention. However, when the situation represents a hazardous condition, public safety demands immediate action. The Carrier states numerous awards have held that the Carrier has greater latitude in dealing with hazardous conditions.

The Carrier also notes that Section 9 of Appendix "P" states that while a reasonable effort shall be made to comply, the contract provision shall not permit the delay of a qualified employee from reporting promptly to cope with the situation.

The Carrier also states the Claimant has failed to present probative evidence to support the claim. The Organization has alleged the Carrier has violated Appendix "P" in not calling the Claimant for overtime work but it has not presented any proof in support of its allegations. The Carrier states that since the Organization has not met its burden of proof the Board should issue either a denial or a dismissal award.

The Board finds the record supports the position of the Claimant rather than the Carrier. The Carrier and the Organization jointly have agreed on a procedure for filling work occurring outside the employee's regular working hours. When the Claimant applied for a place on this list, the Carrier had his address and was aware whether the Claimant lived within one hour of the territorial headquarters. The Carrier had the responsibility to make sure that no employee's name was placed on the list who did not comply with Section 5 of Appendix "P". The Carrier was the administrator of the Contract for this purpose. The Carrier, however, did not protest or object to the Claimant's name on the list and had to assume the consequences thereof.

In the instant case, the Claimant was first out on the list. The Carrier should have called the Claimant to ascertain whether he would take the assignment, explaining to him all the attendant facts and circumstances. If the Carrier thereafter concluded that the Claimant could not respond in a timely fashion, it could have called another employee on the list. However, in this case, the Carrier never called the Claimant even though he was first out on a list that the Carrier permitted him to be on. Since the Carrier voluntarily acceded to the Claimant being on the list, it had waived its objections to the one hour headquarters requirement, and should have called the Claimant for the job and then, depending on all the circumstances, make a judgment whether the Claimant was the appropriate employee to respond. With respect to the alleged emergency, the Organization stated that at that time no trains were involved (Organization Exhibit 6).

The Board finds that the appropriate remedy in this case is to award the Claimant two 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of November 1995.