

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31249
Docket No. SG-31367
95-3-93-3-235

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
(
(Consolidated Rail Corporation (Conrail)

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 J.W. Fry for payment of four hours at the overtime rate, account Carrier violated the current Signalmen's Agreement, particularly Appendix P, when it failed to call the Claimant for overtime service on December 11, 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 basic facts are not in dispute. Claimant is a Signal Maintainer who was properly listed in accordance with Appendix P of the parties' Agreement for overtime calls in his territory. His regular assignment was 7:00 a.m. to 3:30 p.m. Monday through Friday. At approximately 4:00 p.m. on December 11, 1991, Carrier experienced trouble with one of the control points, CP Scotten, in its Centralized Traffic Control system. The CP was "off the air" in that it was not communicating with the central system. Carrier representatives concluded the problem was almost certainly electronic in nature. Accordingly, it did not attempt to call out Claimant to investigate the problem and attempt to repair it.

Rather, Carrier immediately dispatched an Electronic Technician at 4:15 p.m., who repaired the outage and marked off at 8:15 p.m. The repair work involved removing and reseating a circuit board as well as resetting the Central Processing Unit (CPU) by means of activating a toggle switch.

The Organization contends Claimant was entitled to the call per Appendix P. It argues that the disputed work was Maintainer work for which, under Paragraph 6 of Appendix P, Claimant held first call priority. It says that Electronic Technicians were established to make field repairs of equipment that Maintainers could not repair through normal maintenance testing and adjustment. It contends the actual work did not require Technician skills. In addition, the Organization argues that well established Board precedent says that classification of work provisions in an agreement do not constitute an exclusive reservation of work. Accordingly, it seeks four hours pay at the time and one-half rate as remedial compensation.

Carrier contends that the work was known in advance to be electronic and, as such, falls within the descriptive language of the Electronic Technician classification. Carrier maintains it was entirely appropriate to immediately assign the Electronic Technician instead of calling Claimant. In addition, Carrier notes the Claim is excessive in light of several prior awards of this Board, involving these same parties, holding that the overtime rate of pay is not appropriate where Claimant did not actually work.

The parties Agreement describes the involved classifications as follows:

"ELECTRONIC TECHNICIAN

An employee assigned to perform the maintenance, testing, adjustment, repair and replacement of electronic and electromagnetic components associated with C.T.C. code control systems, hot box detectors, motion sensors, presence detectors, broken flange and wheel detectors, w\switch lock overlays, crossing protection overlays, dragging equipment detectors, high and wide load detectors, flood and slide detectors and any other similar systems and the code line carrier systems associated with them. An Electronic Technician may direct other employees in connection with these duties.

MAINTAINER - C&S

An employee assigned to perform either signal or communications inspection, testing, maintenance, installation and repair work covered by this agreement within an assigned territory."

In addition, Appendix P of the effective Agreement provides, in pertinent part, as follows:

"APPENDIX P

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 OF 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.

* * *

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 record in this dispute calls upon us to make a narrow interpretation of the applicable Agreement provisions. For that reason, our decision is confined to the particular facts of this record.

The parties have established, in Appendix P, a precisely detailed procedure for overtime calls involving Maintainer's work. To the extent that the procedure was applicable, there is no dispute that Claimant was properly listed to be called. In addition, the parties have developed language to describe the work of the Electronic Technician and Maintainer classifications.

However, the instant record describes the actual repair work performed in relatively general terms. As a result, it is not clear that the work of removing and reseating circuit boards, as well as resetting the CPU by activating a toggle switch, is beyond the scope of routine Maintainer skills and troubleshooting procedures. The description of the Maintainer classification is sufficiently broad that it could, on this record, encompass the actual work involved. Moreover, no Agreement provision has been cited that explicitly suspends the operation of Appendix P whenever Carrier has reason to suspect that more technical electronic repair procedures may be required to remedy a given situation. Given the nature of Carrier's defense to the Claim, it has the burden to establish its validity. On this record, it has not done so.

It is the conclusion of the Board, therefore, that the Carrier violated Paragraphs 6 and 9 of Appendix P in failing to make a reasonable effort to call Claimant to investigate the problem at CP Scotten.

A remedy issue remains. The parties disagree over the rate of compensatory pay due to Claimant. That issue was resolved, initially, and later followed, in Third Division Awards 26340, 27606, 28231 and 29349, all involving these same parties. We see no reason to depart from these prior decisions. The Claim should be paid 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.

Form 1
Page 5

Award No. 31249
Docket No. SG-31367
95-3-93-3-235

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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