

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36402
Docket No. SG-36027
03-3-00-3-134**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (C&NW):

Claim on behalf of D. E. Beck, for payment of five hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly the Memorandum of Agreement dated February 1, 1983, when on August 2, 1998, it allowed a District Signal Foreman to perform repairs to a crossing gate at 9th Street in Dewitt, Iowa, and deprived the Claimant of the opportunity to perform this work. Carrier’s File No. 1163790. General Chairman’s File No. 8cma2009.2. BRS File Case No. 11255-C&NW.”

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 were given due notice of hearing thereon.

The situation which is the basis of the instant claim occurred on Sunday, August 2, 1998. The Claimant was a regularly-assigned Signal Maintainer headquartered at Taima, Iowa.

The claim as presented on August 28, 1998, alleges that on the date in question at some unspecified time an automatic crossing gate at 9th Street in Dewitt, Iowa, was malfunctioning. Dewitt, Iowa, is not located within the assigned territory of the Claimant.

The Signal Operations Center attempted to contact the Signal Maintainers who were regularly assigned to cover the territory that included Dewitt, Iowa. Neither of the two regularly-assigned Signal Maintainers could be contacted. This fact is acknowledged by the Organization in their initial claim presentation.

The Signal Operations Center thereupon contacted the District Signal Foreman and informed him of the situation. He, the District Signal Foreman, attempted to contact two other Signal Maintainers headquartered at Sterling, Illinois, with no success. The District Signal Foreman also attempted to contact an Assistant Signalman who resided in Dewitt, Iowa, the location of the malfunctioning crossing gate. He was unsuccessful in this attempt. At this point in the scenario, the District Signal Foreman proceeded to the scene of the malfunction and corrected it.

It is uncontested that the territory in which the malfunctioning crossing gate was located was not within the regularly assigned territory of the Claimant. It is acknowledged by the parties that the Signal Maintainers who were regularly assigned to the territory of the malfunctioning crossing gate could not be contacted. It is undisputed that additional unsuccessful attempts were made by the District Signal Foreman to locate other Signal Department employees to handle the malfunction. Only after five unsuccessful attempts had been made to locate Signalmen to handle the trouble did the District Signal Foreman assume the responsibility to correct the malfunctioning crossing gate.

It is undisputed in the case record that on the date in question the Claimant did, in fact, receive and take an overtime call for five hours. However, neither party to the dispute has seen fit to favor the Board relative to the time period of this overtime call or the nature or location of the overtime service performed by the Claimant.

Based on the totality of the evidence which is found in this case file, the Board agrees with the logical conclusions as set forth in Third Division Award 31745. The District Signal Foreman was made aware that an immediate correction of the malfunctioning crossing gate was necessary. Both he and the Signal Operations Center made several unsuccessful attempts to locate Signalmen to make the necessary correction. As a District Signal foreman, the correction of the malfunctioning crossing gate was his responsibility.

The Organization has failed in this case to disprove that the Foreman's performance of the incidental work which was a consequence of his Foreman's responsibility in any way violated the rights of a Maintainer located in a territory adjacent to the location of the malfunctioning equipment. The Board concludes that in this case the activity of the District Signal Foreman was ". . . well within the parameters of the negotiated concept of work permitted to be performed by District Signal Foremen" (Third Division Award 31475). Therefore, the claim as presented is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 18th day of February 2003.