

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37906
Docket No. SG-38212
06-3-04-3-124**

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
(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:

Claim on behalf of R. J. Bartholomew, for \$98.22, a 3 hour call, account Carrier violated the current Signalmen's Agreement, particularly Rule 16, when on December 31, 2002, Carrier called the wrong employee for signal trouble (broken gate) instead of calling the Claimant, who was the assigned signal maintainer and was available to take the call. As a result of Carrier's violation the Claimant was denied the opportunity to perform this work. Carrier's File No. 1358167. General Chairman's File No. W-16-257. BRS File Case No. 12915-UP.”

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.

This case concerns itself with a situation in which the Carrier had information relative to a signal malfunction involving a broken crossing gate. This malfunction required expedited attention to correct. The Claimant was in line for a call to perform service of this type. However, the Claimant could not be contacted in the usual and customary manner so another Signal Maintainer was dispatched to correct the malfunction.

The Organization initiated the penalty claim on behalf of the Claimant alleging two violations of Rule 16 - SUBJECT TO CALL. Its first allegation was that the Claimant was available for a call and had not been contacted at his regular calling point. The Organization's second contention was that the Claimant was entitled to a two-hour wait period before another Signal Maintainer could be called.

Rule 16 - SUBJECT TO CALL reads, in pertinent part, as follows:

"RULE 16 - SUBJECT TO CALL

A. Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and will notify the person designated by the management of their regular point of call. When such employees desire to leave such point of call for a period of time in excess of two (2) hours, they will notify the person designated by management that they will be absent, about when they will return, and when possible, where they may be found. Unless registered absent, the regular assignees will be called except when unavailable due to rest requirements under the Hours of Service Act, as amended by Public Law 94-348."

During the on-property handling of this case, the Carrier pointed out that attempts were, in fact, made to contact the Claimant at his tie up point, his cell phone number and on his pager. No less than three such attempts were made by the Carrier over a period of time extending from 2:14 P.M. to 3:33 P.M. Only after these three attempts to contact the Claimant failed did the Carrier dispatch the other Signal Maintainer.

The Carrier additionally argued that there is no provision in Rule 16 or otherwise which requires that it must wait for two hours before contacting another employee. To require the Carrier to so wait would effectively paralyze the Carrier's operations and inhibit the prompt attention to signal problems.

The Board concurs with the Carrier's position in this case.

The evidence of record clearly shows that attempts to contact the Claimant were made at 2:14 P.M., 3:07 P.M., and 3:33 P.M. all without success. The Board is impressed with the candid acknowledgment by the Organization that:

"Mr. Bartholomew is available 90% of the time and takes calls."

The instant case obviously falls within the ten percent of the time when the Claimant is not available to receive calls.

As for the argument relative to a two-hour wait before calling another employee, the Carrier's position is correct. Rule 16A does nothing more than allow an employee to be unavailable for a call for a two-hour period when he notifies Management in advance of his unavailability. The Rule does not require the Carrier to be paralyzed for a two-hour period before it can react to a signal malfunction.

This claim must be and 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 22nd day of August 2006.