

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 39368  
Docket No. SG-39211  
08-3-NRAB-00003-0050673  
(05-3-673)

The Third Division consisted of the regular members and in addition Referee Joan Parker 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 K. L. Hopwood for three hours at his time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 16 and 80, when it failed to call the Claimant on his assigned territory on September 17, 2004, and instead called another employee, causing the Claimant to miss a work opportunity. Carrier’s File No. 1412608 (S4-UP273). General Chairman’s File No. N 165 02. BRS File Case No. 13350-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.

On September 17, 2004, at approximately 5:00 A.M. near milepost 132.74 in Tama, Iowa, UP 5002 collided with a passenger vehicle after the vehicle drove around the activated lights and gates, according to witnesses. Manager Signal Maintenance R. Easley instructed the Signal Operation Center (SOC) to contact District Signal Foreman (DSF) T. M. Nangle to respond and inspect the crossing apparatus. Neither Easley nor Nangle contacted Claimant K. L. Hopwood who, at the time of the incident, was assigned to the position of Signal Maintainer with headquarters at Marshalltown, Iowa.

By letter dated September 17, 2004, the Organization filed a claim seeking three hours pay at the overtime rate on behalf of the Claimant. The Organization emphasized that because DSF Nangle's primary duties were to direct and supervise the work of employees in lower classifications, the Carrier should have contacted the Claimant, who was available to respond outside his assigned hours of 7:00 A.M. to 4:00 P.M.

The Rules cited by the Organization read as follows:

**"RULE 16 – SUBJECT TO CALL**

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 the management that they will be absent, about when they will return, and, when possible, where they may be found. Unless registered absent, the regular assignee will be called, except when unavailable due to rest requirements under the Hours of Service Act, as amended by Public Law 94-348. (Emphasis added.)

**RULE 80 – LOSS OF EARNINGS**

An employee covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement will be reimbursed for such loss."

The Organization contends that the Carrier violated Rules 16 and 80 when it used the DSF to respond to the accident scene on the Claimant's assigned territory. According to the Organization, the Claimant was not registered absent and was available to respond, but was never called. He, therefore, lost a work opportunity and is entitled to three hours' pay at the overtime rate.

The Organization acknowledges that under Rule 16(A) maintenance employees recognize the possibility of railroad emergencies. But the Rule also states that "unless registered absent, the regular assignee will be called." The Claimant was not registered absent; therefore, he should have been called. While the Carrier asserts that the DSF was called to the accident scene because he was the closest individual who could get the history off of the crossing predictor before it was erased, the Organization contends that the Carrier failed to prove that an emergency truly existed which in any way justified its failure to contact the Claimant. In fact, the record provided by the Carrier states that at approximately 10:00 A.M., five hours after the DSF was called to the accident, DSF Nangle and Signal Maintainer Leimbacher ". . . were finally able to inspect the State Street crossing for proper operation, after the fire department and rescue squads left the area."

The Organization insists that if a true emergency existed, common sense would dictate that the Signal Maintainer assigned to that territory would also have been dispatched immediately to help with the inspection of the signal equipment.

The Organization also asserts that the Carrier never provided any evidence that the recordings from the crossing predictor would not have been available if it had used the Claimant to respond to the call. Moreover, the Organization emphasizes that it never stated that the Carrier was prohibited from calling the DSF to respond to the crossing accident. The Carrier had that option, but it did not have the right to deprive the Claimant of a work opportunity to which he was entitled under the Agreement.

The Carrier contends that the DSF was dispatched to the accident scene to preserve and obtain history from the crossing predictor. The prompt retrieval of data was required before another train passed the signal point and such information was erased or replaced by new information. In the Carrier's view, the action it took was a legitimate response to a fatal accident, especially because the retrieval of data from a crossing predictor is not contractually reserved to BRS-represented employees to the exclusion of proper authorities such as MSM Easley and others.

The Carrier also emphasizes that all inspections and repairs to the signal system were subsequently performed after the train had been moved (after 10:00 A.M.). In this regard, it notes that the DSF stated that he heard the Claimant and Signal Maintainer Leimbacher discussing the accident on the radio. The DSF attempted to contact both of them, but only Leimbacher responded. According to the Carrier, it was not until 10:00 A.M., while the Claimant was already on duty, that the DSF and Leimbacher were able to inspect the crossing for proper operation. In fact, the DSF did not independently perform any work reserved to BRS-represented employees, and it was Signal Maintainer Leimbacher who actually inspected the crossing.

The central issue in this case is whether the DSF was properly called instead of the Claimant to respond to the crossing accident on the Claimant's assigned territory. The contract language is clear. Rule 16(A) requires the Carrier to call the employee assigned to regular maintenance duties, unless he is registered absent. The Claimant was not registered absent on the day in question, and while the accident was arguably an emergency, the record evidence raised questions as to why the Carrier failed to call the Claimant when it first realized that there were damages in need of repair. For this reason, and others discussed below, the instant claim will be sustained on a non-precedential basis.

The Carrier's assertions as to the emergency which warranted the DSF's immediate arrival at the accident were undermined by the fact that it was not until after 10:00 A.M. that the DSF and Signal Maintainer Leimbacher were able to inspect the crossing for proper operation. Moreover, the fact that there was a fatal incident did not, per se, void the Carrier's contractual obligation to call the Claimant to respond to the accident on his assigned territory, given that he was not registered absent.

It is also clear that the DSF was dispatched at 5:23 A.M. and did not arrive at the crossing accident until approximately 5:45 A.M., at which time he "wrote down some readings and also noticed some damage on a circuit controller." Assuming he wrote down his readings between 5:45 A.M. and 6:00 A.M. and discovered the damaged circuit controller shortly thereafter, one may reasonably ask: "Why wasn't the Claimant immediately called to expedite the repairs to the signal equipment?"

The DSF made no mention of attempting to contact the Claimant through the SOC or Dispatcher. His statement that he heard the Claimant and Leimbacher talking on the radio reveals that the conversation he overheard was after 7:00 A.M., i.e. after they were both at work during their assigned 7:00 A.M. – 4:00 P.M. shift. Thus, it

appears that the DSF did not make a genuine effort to contact the Claimant once he learned that signal equipment had been damaged, and he never offered a valid explanation for why he did not do so.

This is not to say that a DSF lacks authority to retrieve data from a crossing predictor in connection with an accident or that this work is exclusively reserved to BRS-represented employees by the Scope Rule of the Agreement. Furthermore, there is established arbitral precedent which recognizes that in an emergency, the Carrier has the right to assign available employees.

However, in the unique circumstances of this case, the Carrier's managers exercised potentially poor judgment by not assigning the Claimant in the first place, once they realized that there was damage. The fact that it was not until after 10:00 A.M. that the actual inspection work could be done was an after-the-fact excuse, which did not relieve the Carrier of its obligation to call the Claimant outside of his regular assigned hours, given that he was available and not registered absent.

**AWARD**

**Claim sustained.**

**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 21st day of October 2008.**