

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: (a) That the Carrier violated the Signalmen's Agreement when it failed to call Signal Maintainer F. P. Higginbotham for overtime work required on March 21, 1948, and May 2, 1948, when he was being held subject to call in accordance with the provisions of said Agreement.

(b) That Signal Maintainer F. P. Higginbotham, who was being held subject to call, shall be paid 2 hours and 40 minutes at the rate of time and one-half for March 21, 1948, and 13 hours at the rate of time and one-half for May 2, 1948, for work performed by Assistant Signal Maintainer H. L. McClendon, who was not being held subject to call on the above dates.

EMPLOYES' STATEMENT OF FACTS: F. P. Higginbotham is regularly assigned as Signal Maintainer with headquarters at Ridgecrest, N. C.

H. L. McClendon is regularly assigned a Assistant Signal Maintainer with headquarters at Biltmore, N. C.

In accordance with the provisions of Rule 36 of the current Signalman's Agreement, a schedule was prepared by Signal Supervisor C. L. Kale, Asheville Division designating the Sundays and the seven holidays on which Signal Maintainers filling the positions so designated shall be held subject to call under this rule. Signal Maintainer F. P. Higginbotham was held subject to call on March 21, 1948, and May 2, 1948. Assistant Signal Maintainer H. L. McClendon was not being held subject to call on either of these dates.

At 2:15 P. M. on March 21, 1948, Assistant Signal Maintainer H. L. McClendon was called to correct signal trouble at the interlocking plant at Biltmore, N. C., for which he was paid a minimum call of 2 hours and 40 minutes at overtime rate.

At 1:00 P. M. on May 2, 1948, Assistant Signal Maintainer H. L. McClendon was called to correct signal trouble at Murphy Junction, for which he was paid 5 hours and 20 minutes at overtime rate.

At 9:00 P. M. on May 2, 1948, Assistant Signal Maintainer H. L. McClendon was again called to correct signal trouble at Murphy Junction for which he was paid 5 hours and 40 minutes at overtime rate.

F. P. Higginbotham was being held subject to call on each of the above mentioned dates. He was available to correct the signal trouble involved and could have responded promptly if he had been called.

at time and one-half rate as travel time on behalf of Mr. Higginbotham on May 2 thus recognizing that it would have taken him at least one-half hour longer on each occasion to reach the scene of signal trouble and return home than it took Signal Maintainer McClendon. In these circumstances the carrier was fully justified in calling and utilizing Signal Maintainer McClendon and there has not been a violation of any rule of the effective Signalmen's Agreement in not calling Signal Maintainer Higginbotham to do emergency work performed by Signal Maintainer McClendon. Mr. Higginbotham has been allowed pay for all he is entitled to under the agreement.

CONCLUSION

In conclusion, carrier respectfully submits that:

Signal maintainers not relieved from being subject to call on Sundays or holidays have no preferential right to work on such days over signal maintainers released from the requirements of Rule 36 (a).

Rule 36 (d) simply confirms the fact that use on more than one section or territory of employees not released from the requirements of Rule 36 (a) is permissible. It further provides that "The scheduling of employees to be held subject to call will not prohibit the use of other signal employees on Sundays and holidays when employees held subject to call * * * because of circumstances beyond their control cannot respond promptly when called." The claimant could not under the circumstances have responded promptly if called for the emergency work here involved. He was too far away.

Carrier by paying Mr. Higginbotham for a minimum of 4 hours at pro rata rate for each of the Sundays on which held subject to call, has fully complied with the effective agreement.

The claim being unsupported by any provision of the agreement, should in all things be denied and Carrier respectfully requests that the Board so hold.

The carrier in making response to notice of the Third Division, National Railroad Adjustment Board, without having seen petitioner's submission undertaking to meet the issues raised in the handling of this case on the property, reserves the right after being apprised of petitioner's allegations of fact, statement of position and argument, to present such additional factual evidence and written or oral argument as it may seem appropriate and necessary for a complete presentation of the case.

All relevant facts or arguments have heretofore been made known to the employees' representative.

OPINION OF BOARD: The Brotherhood claims Carrier violated its Agreement with Signal Maintainer F. P. Higginbotham for overtime work required when he was being held subject to call in accordance with Rule 36 of the parties then effective Agreement. It asks that he be paid the same as if he had been properly called to do the work which, on those dates, Assistant Signal Maintainer H. L. McClendon performed, including 2 hours for travel time.

Claimant was regularly assigned as a Signal Maintainer with headquarters at Ridgecrest, N. C.

Section (b) of Rule 36 of the parties' effective Agreement provides for relieving signal maintainers from being subject to call on every Sunday and holiday. To accomplish this purpose it provides that each Signal Supervisor will prepare a schedule for the territory over which he has supervision, which schedule shall be prepared on an annual basis. It shall designate the Sundays and holidays on which signal maintainers filling positions of signal maintainers or any assistant signal maintainer, when the facts permit his being used, shall be held subject to call. The schedule must be prepared so that

signal maintainers on adjoining territories will be alternated in being required to be subject to call on Sundays and holidays but when so designated as being held such signal maintainers will be required to hold themselves available and to respond promptly, when called.

Signal Supervisor C. L. Kale, Asheville Division, prepared such a schedule for the territory over which he had supervision, which included the section or territory with headquarters at Biltmore and the section or territory with headquarters at Ridgecrest. This schedule provided that the Signal Maintainer at Ridgecrest, F. P. Higginbotham, was designated as being held subject to call on Sunday, March 21, 1948, and on Sunday, May 2, 1948, whereas the Signal Maintainer at Biltmore was on these dates shown as not being subject to call or as being relieved. In accordance with (e) of Rule 36 Higginbotham was paid for 4 hours at pro rata on each of these dates for being held subject to call.

On Sunday, March 21, 1948, Lock No. 22 at the interlocking plant at Biltmore needed attention and Carrier, at 2:15 P. M. on that date, called H. L. McClendon, a qualified signal maintainer but regularly assigned as an Assistant Signal Maintainer with headquarters at Biltmore. He was not listed by the Supervisor on his schedule as subject to call. McClendon responded and corrected the trouble. For this service he was paid a minimum of 2 hours and 40 minutes at the overtime rate.

On Sunday, May 2, 1948, difficulty was experienced with signal 5 L. A. at the interlocking plant at Murphy Junction which is 3.2 miles from Biltmore. At 1 P. M. of that day, Carrier again called McClendon to fix the trouble. On this date the same service situation existed with reference to McClendon as existed on March 21, 1948. McClendon responded and endeavored to fix the trouble using 5 hours and 20 minutes of time. He was paid for this service at the overtime rate. He was called back at 9 P. M. of the same day, responding at 10:25 P. M., and spent 5 hours and 40 minutes attempting to correct the same trouble. For this he was paid at overtime. He was relieved at 2:40 A. M. on Monday, May 3, 1948. Further tests were made later that day which resulted in correcting the trouble.

On both of these dates claimant was being held subject to call, was available and could and would have promptly responded had he been called.

Section (d) of Rule 36 provides in part: "Employees held subject to call under this Rule 36 and called for service will not be confined to work on any particular section or territory, * * *." Carrier speaks of Ridgecrest being 15.1 miles from Biltmore and 19.2 from Murphy Junction. Although both Biltmore and Murphy Junction are not in the Ridgecrest section or territory this provision of the rule clearly authorizes the use of signal maintainers held for service in adjoining sections or territories, which is the situation here. This provision can leave no doubt that the parties must have understood by the terms of the rule as adopted that when service needs arose some of the signal maintainers being held would be required to travel to adjoining territories.

Section (d) of Rule 36 also provides: "The scheduling of employees to be held subject to call will not prohibit the use of other signal employees on Sundays and holidays when employees held subject to call need assistance or because of circumstances beyond their control cannot respond promptly when called."

This provision clearly states that signal maintainers scheduled and held subject to call on Sundays and holidays will be called to perform the signal work of the Carrier when need therefor arises on these days but with two qualifications: First, when employees held subject to call need assistance, which condition did not exist here; and second, when, because of circumstances beyond their control, such employees held subject to call cannot respond promptly when called. Neither did that condition exist.

Carrier suggests the trouble on these two dates created emergency situations because, to a certain extent, they affected train schedules, as evidenced by the train schedules cited. It is undoubtedly true that signal trouble will generally affect the train schedules to some degree, depending upon the extent of the trouble, but that would not immediately create an emergency situation. Considering how these situations were handled, particularly the trouble on May 2, 1948, does not leave an impression that Carrier considered it an emergency at the time. Just what Carrier would be authorized to do under this rule, if a real emergency situation existed we need not here decide for such was not created by the trouble which Carrier experienced on these two dates.

We have come to the conclusion that Carrier was, by reason of the provisions of Rule 36, obligated to call claimant on each of these dates and its failure to do so was in violation thereof. The claim, being in accord with what claimant would have been entitled, should be sustained. See Rule 35 of the parties' Agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 23rd day of May, 1952.