

Award No. 10868

Docket No. SG-10729

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Harold Kramer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Illinois Central Railroad Company that:

(a) The Carrier violated the Signalmen's Agreement effective October 1, 1936, as amended, when on Friday, April 26, 1957, it called and directed Signal Maintainer R. H. Johnson and Assistant Signal Maintainer J. H. Cowart to report for overtime work with Signal Gang No. 310, under the direction of Leading Signalman J. C. Dickerson, on April 27, 1957, instead of calling and using Signalman W. R. Brown and Assistant Signalman D. W. Perry, who were working with and were a part of the Signal Gang under the direction of Leading Signalman Dickerson.

(b) The Carrier now compensate Signalman W. R. Brown and Assistant Signalman D. W. Perry for twelve (12) hours at their respective overtime rates of pay, which represents the hours worked and the rates of pay received by Signal Maintainer J. H. Johnson and Assistant Signal Maintainer J. H. Cowart on April 27, 1957. [Carrier's File No. 135-192-71, Case No. 42 Sig.]

EMPLOYEES' STATEMENT OF FACTS: On April 26, 1957, the claimants, Signalman W. R. Brown and Assistant Signalman D. H. Perry, were regularly assigned to Signal Gang No. 310 under Signal Foreman C. W. McDaniels, and worked with and under the direction of Leading Signalman J. C. Dickerson at New Orleans, Louisiana.

The employees of Signal Gang No. 310 who were working with and under the direction of Leading Signalman Dickerson on April 26, 1957 were: Signalman J. C. Davis; Signalman W. R. Brown; Assistant Signalman D. W. Perry; Assistant Signalman H. M. McCullough; and Signal Helper C. P. Speed.

On April 26, 1957, Signal Maintainer R. H. Johnson worked as night Signal Maintainer on the New Orleans Terminal, and Assistant Signal Maintainer J. H. Cowart worked with a Signal Maintainer on the Termi-

Carrier reaffirms its position that this claim is before the Board prematurely for failure on the part of the Employees to handle this dispute in accordance with Section 2, Second and Sixth of the Railway Labor Act. Without prejudice to this position, the Carrier would like to point out that should the position of the Employees be sustained your Board would go beyond its function of interpreting existing provisions in the agreement between its parties as delegated by the Railway Labor Act, and in effect write a new rule into the agreement for the following reasons:

1. There is no rule in the agreement to support the Employees' request.
2. The practice on the property supports Carrier's action in calling the senior employe of a Signal Gang for overtime work.
3. The Claimants involved herein were not a part of Signal Gang No. 310 who were assigned the overtime work and had no contractual right to the work.

Refer to Awards 7057 and 14566, First Division; 1474, Second Division; Awards 389, 871, 1230, 1609, 2612, 2622, 3407, 4763, and 5079, Third Division; and Award 501, Fourth Division, as evidence of such findings.

There is no basis for this claim and it should be denied.

All data in this submission have been presented to the Employees and made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: We have in this dispute conflicting statements regarding the facts and which we are not able to reconcile. We also note, that there was no conference on the property regarding this dispute.

An exchange of correspondence between the Carrier and the Organization is as follows:

"BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

"Mr. R. E. Lorentz, Manager of Personnel
Illinois Central Railroad
135 East Eleventh Place
Chicago 5, Illinois

"October 29, 1957

"Dear Sir:

"Please consider this as a appeal to the letter of declination from Mr. J. C. Jacobs, Engineer Maintenance of Way, dated October 21, 1957 concerning the failure to call the senior employes for overtime work on the New Orleans Terminal Division.

"On Friday, April 26, 1957, Signal Supervisor, T. J. Kremer, instructed his lead signalman, J. C. Dickerson, to take certain help and report to Remey, La., Saturday, April 27, 1957, at 8:00 A. M. The signal gang was to report to Remey to perform necessary work to clear the main line after a derailment.

"Mr. Kremer instructed Dickerson to call gangmen, R. H. Johnson, Signalman; J. C. Davis, Signalman; H. M. McClough, Assistant Signalman; C. P. Speed, Helper. McClough and Speed were not available when they were called at 6:30 P. M. Friday. At 8:00 A. M. Saturday morning Dickerson, with Johnson, Davis, and J. H. Cowart, Assistant Maintainer, left for Remy and performed work for twelve (12) hours.

"We contend that Mr. Johnson and Mr. Cowart were called in error and that Mr. W. R. Brown, Signalman; and D. W. Perry, assistant signalman; should have been called in their place. It has been the practice of this company to give extra time to the senior men, and Brown and Perry have seniority over Johnson and Cowart respectively. We think that this is backed up by the National Railroad Adjustment Board, Award No. 7242, Docket Number SG-7162, Third Division.

"We would appreciate your investigation of this claim, so as you may be able to sustain our position in that senior-men, Brown and Perry of signal gang should be paid at the rate of time and one-half for twelve (12) hours that were worked by junior men on over time call.

"If you do not sustain our position, we desire a conference at your earliest convenience as provided under Section 2 of the Railway Labor Act.

"Very truly yours,

"/s/ Edward Waddington
General Chairman"

The claim was declined on December 16, 1957, in the following letter:

"ILLINOIS CENTRAL RAILROAD COMPANY

"December 16, 1957

"Mr. Edward Waddington, General Chairman
Brotherhood of Railroad Signalmen of America
RFD No. 1
Carbondale, Illinois

"Dear Sir:

"Please refer to your letter of October 29, 1957, concerning claim in favor of W. R. Brown, Signalman, and D. W. Perry, Assistant Signalman, account not called for overtime work on Saturday, April 27, 1957, at Remy, Louisiana.

"My investigation of this matter reveals that on April 26, 1957, there was a derailment at Remy, Louisiana. The Supervisor of Signals went to Remy, Louisiana, to ascertain the extent of repairs necessary and did not return to Kenner, Louisiana, until about 5:15 P. M.

"Upon his return, he contacted Lead Signalman J. C. Dickerson and instructed him to notify Signal Gang 310 to report to

the tool house on Saturday, April 27, 1957, to perform overtime at Remy, Louisiana.

"Mr. Dickerson was able to contact but two members of Signal Gang No. 310 who were available for the work, Signalmen J. C. Davis, Sr., and R. H. Johnson. Assistant Signalman H. M. McCullough did not desire to work and Signal Helper C. P. Speed was out of town.

"In order to meet the service requirements, the Signal Supervisor determined that one additional man would be needed for pole line work, and the only employe that was immediately available was Assistant Signal Maintainer J. H. Cowart, who went with the members of Gang No. 310 to Remy, Louisiana.

"Under date of May 29, 1954, former General Chairman C. S. Chandler wrote me as follows concerning the use of employes in a gang for overtime work:

'On July 9 & 10, 1953, Louisiana Division Signal Gang No. 2, C. W. McDaniels, Foreman, worked fifteen (15) hours overtime at Southport Junction, Louisiana. From 4:00 P.M. on the 9th until 12:00 P.M. and from 12:01 A.M. until 7:00 A.M. on the 10th.

'Three (3) of the senior men in seniority were not used for this overtime work, instead junior men were used. On July 9th the three men who were not used, were sent to the match factory crossing to work with instructions to return to the camp cars at 4:00 P.M. Again on the 10th they were sent to the match factory crossing to work and again they were not used on the overtime.

'The camp cars were within three or four hundred feet from a telephone at a crossing that has a watchman on duty at all times, and could have called them to the phone. The three men could have been called on the 9th and 10th without any loss of time in making the call.

'I feel this claim of time by the three employes who were not used is justified, therefore I claim time for the time worked by junior employes at the rate of time and one half, same as was paid junior employes who performed the work.

'This claim was handled with the Division Officials of the Louisiana Division and I have handled with Mr. J. C. Jacobs, Engineer Maintenance of Way. All have declined the claim.

'The employes making the claim are: R. B. Sandifer, Signalman, W. A. Morris, Assistant Signalman, and E. O. Rowley, Assistant Signalman.

'It is true that we do not have a rule in the Signalmen's Agreement spelling out overtime, as to who will receive it, and the principles of overtime, but it has been the practice on this railroad down through the years

to use the senior employes of a gang in filling overtime needs. Section 63 of the Signalmen's Agreement was the governing factor when these men were promoted and Section 37 explains their seniority rights and both Sections still govern.

'As there are no specific rules in our Agreement spelling out the principle of overtime assignment, the Opinion of the Board in Award No. 5346, Docket MW 5217 states that it need not be spelled out as seniority is the controlling factor, and that seniority is the essence of Collective Agreement and that it applies in determining preference to overtime work of a given class. Awards 4200 and 4531 also state the same in part.

'If you desire a meeting to discuss this claim, please advise of time, date and place. Would appreciate if you would investigate this claim and advise of your contention.

'Very truly yours,

/s/ C. S. Chandler'

"Since it has been your position that the senior men of the gang utilized on overtime are entitled to be used on overtime, I fail to find any basis for your contention that Mr. R. H. Johnson was called in error as he was a member of Gang No. 310 on the claim date and was properly utilized.

"When it was known that an additional employe was necessary on Saturday, April 27, 1957, Mr. Dickerson made several attempts to contact senior employes, but only Assistant Signal Maintainer Cowart was available for immediate service.

"In view of the circumstances, I find that there has been no violation of the agreement, and your claim is, of necessity, declined. I am available to discuss this matter in conference at any mutually agreed upon time.

'Yours truly,

'/s/ R. E. Lorentz
'Manager of Personnel'

The General Chairman replied on December 26, 1957, as follows, suggesting that a conference be held:

"BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

"December 26, 1957

"Mr. R. E. Lorentz, Manager of Personnel
Illinois Central Railroad
135 East Eleventh Place
Chicago 5, Illinois

"Dear Sir:

"Refer to your letter of declination on December 16, 1957, concerning claim in favor of W. R. Brown, Signalman, and D. W.

Perry, Assistant Signalman, account senior men not called for overtime work on Saturday, April 27, 1957, at Remy, Louisiana.

"Since you have declined this claim and it is our position that the senior men be used for all overtime, we cannot accept your decision as final; but we can meet with you at your convenience if you feel that a conference will be of any help.

"Please advise.

"Very truly yours,

"/s/ Edward Waddington
"General Chairman"

Carrier answered on January 7, 1958, agreeing to a conference on any date mutually convenient:

"ILLINOIS CENTRAL RAILROAD COMPANY

"January 7, 1958

"Mr. Edward Waddington, General Chairman
Brotherhood of Railroad Signalmen of America
Route No. 1
Carbondale, Illinois

"Dear Sir:

"Please refer to your letter of December 26, 1957, concerning claim of Signalman W. R. Brown and Assistant Signalman D. W. Perry, account not used for overtime work on Saturday, April 27, 1957, at Remy, Louisiana.

"I will be glad to confer with you in my office on this case on any mutually convenient date.

"Yours truly,

"/s/ R. E. Lorentz
"Manager of Personnel"

The General Chairman wrote as follows on January 14, 1958:

"BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

"January 14, 1958

"Mr. R. E. Lorentz, Manager of Personnel
Illinois Central Railroad
135 East Eleventh Place
Chicago 5, Illinois

"Dear Sir:

"Refer to your letter of January 7, 1958, concerning claim of Signalman W. R. Brown and Assistant Signalman D. W. Perry, account senior men not being used for overtime work on Satur-

day, April 27, 1957, at Remy, Louisiana; also your willingness to hold conference with us.

"This is to advise that if I am allowed to attend the Suggestion Committee meetings now that I am back as General Chairman I will be in Chicago every Thursday, if Thursday of any week of near future is not convenient to you I will be available at your notice.

"Very truly yours,

"/s/ Edward Waddington
"General Chairman"

and again on March 7, 1958:

"BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

"March 7, 1958

"Mr. R. E. Lorentz, Manager of Personnel
Illinois Central Railroad
135 East Eleventh Place
Chicago 5, Illinois

"Dear Sir:

"Please refer to our past correspondence concerning claim appealed to you in behalf of Signelman W. R. Brown and Assistant Signelman D. W. Perry, account senior men not being used for overtime work on Saturday, April 27, 1957, at Remy, Louisiana.

"Also please refer to your letter of declination dated December 16, 1957, concerning the above claim;

"Please also refer to my letter dated October 29, 1957, concerning this claim, at which time I advised that if you did not sustain our position, we desired a conference at your earliest convenience as provided under Section 2 of the Railway Labor Act. We now hold that you are in violation of this Railway Labor Act in as much that you did not set a time, place, or date for such a conference.

"With the above in mind this is to advise that we cannot accept your decision and we are now appealing this claim to Mr. Jesse Clark, President, Brotherhood of Railroad Signalmen, 503 Wellington Avenue, Chicago 14, Illinois, requesting that he handle the claim with the National Adjustment Board, Third Division.

"Any further correspondence should be handled with Mr. Clark.

"Very truly yours,

"/s/ Edward Waddington
"General Chairman"

Carrier set a conference date for Thursday, March 27, 1958, in its letter to the General Chairman dated March 21, 1958:

"ILLINOIS CENTRAL RAILROAD COMPANY

"March 21, 1958

"Mr. Edward Waddington, General Chairman
Brotherhood of Railroad Signalmen of America
Route No. 1
Carbondale, Illinois

"Dear Sir:

"Please refer to your letter March 7, 1958, claim of Signalman W. R. Brown and Assistant Signalman D. W. Perry.

"I will be glad to discuss this claim with you in my office at 2:00 P. M., Thursday, March 27, 1958.

"Yours truly,

"/s/ R. E. Lorentz
"Manager of Personnel"

The General Chairman replied on April 14, 1958, as follows:

"BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

"April 14, 1958

"Mr. R. E. Lorentz, Manager of Personnel
Illinois Central Railroad
135 East Eleventh Place
Chicago 5, Illinois

"Dear Sir:

"Please refer to your letter dated March 21, 1958 concerning the claim in behalf of Signalman W. R. Brown and Assistant Signalman D. W. Perry.

"I have no objections to a conference, but as I stated in my letter of March 7, 1958, we were turning the claim over to Mr. Jesse Clark, President, Brotherhood of Railroad Signalmen, 503 Wellington Avenue, Chicago 14, Illinois. If it is Mr. Clark's desire that I hold a conference with you, I will be present.

"Very truly yours,

"/s/ Edward Waddington
"General Chairman"

Under date of September 12, 1958 notice of intent to file an ex parte submission was filed with the Third Division, National Railroad Adjustment Board.

Section 2, Second, of the Railway Labor Act reads as follows:

"Second. All disputes between a carrier or carriers and its or their employes shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employes thereof interested in the dispute."

OPINION

There is evidence in the above lengthy exchange of correspondence regarding willingness of the parties to meet but the conference on the property, as required by Section 2, Second, of the Railway Labor Act did not take place. We have no way of knowing whether a conference in this dispute would be useful or useless. In our opinion Section 2, Second is clear and specific and mandatory. This dispute therefore is remanded to the parties to attempt to adjust their differences as required by the Railway Labor Act and Circular 1, and is not therefore properly before this Board.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 the subject matter of the claim is not properly before the Board.

AWARD

Remanded to parties as indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October 1962.

LABOR MEMBER'S DISSENT TO AWARD 10868, DOCKET SG-10729

The majority is in error in remanding Award 10868 for the reasons advanced therein.

The record and the Opinion of the Board quote correspondence between the Organization's General Chairman on the property and the Carrier's Manager of Personnel which shows that the General Chairman repeatedly requested a conference with the Manager of Personnel and that the Manager of Personnel stalled in setting a date for such conference until after the General Chairman had advised him that he was forwarding the claim to the Organization's National Headquarters for progressing to this Board.

The action of the majority in remanding this claim is not in keeping with the Railway Labor Act, Section 2, General Purposes which states:

“(5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.”

Section 2, Sixth of the Railway Labor Act provides in part:

“... it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employes, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held;...”

The Carrier was not in compliance with the above quoted portions of the Railway Labor Act and Award 10868 is in error; therefore, I dissent.

W. W. Altus
Labor Member

**CONCURRING OPINION OF CARRIER MEMBERS,
AWARD 10868, DOCKET SG-10729**

Award 10868 is clearly correct in holding that: “. . . Section 2, Second is clear and specific and mandatory. . . .”. It is also clearly correct in holding that: “. . . the conference on the property, as required by Section 2, Second, of the Railway Labor Act did not take place. . . .”.

While there is some precedent in prior Awards for remanding such a case to the parties, that procedure is superfluous where, as here, it is evident that the parties are subject to the provisions of Article V of the August 21, 1954 National Agreement, the time within which proceedings could have been properly instituted before the Board has long since expired, and the claim is therefore barred. It would have been better procedure to simply dismiss the claim instead of remanding it to the parties—see our recent **Awards 10852** (McGrath) and **10939** (McMahon).

G. L. Naylor
O. B. Sayers
R. E. Black
R. A. DeRossett
W. F. Euker