

Award No. 11225

Docket No. SG-10664

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION  
(Supplemental)**

Phillip G. Sheridan, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA  
THE VIRGINIAN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Virginian Railway Company that:

(a) The Carrier violated the current Signalmen's Agreement, particularly Rule 314 (f), when it called and used another Signal Maintainer on the Carolina Jct., Va., signal maintenance territory (mile post 4.5 to mile post 30) on July 15, 1957, and August 11, 1957, in place of calling and using the regular assignee, Signal Maintainer A. D. Bohon.

(b) The Carrier now pay Signal Maintainer A. D. Bohon for two hours and forty minutes at his respective overtime rate of pay for the violation on July 15, 1957, and three hours and ten minutes at his respective overtime rate of pay for the violation occurring on August 11, 1957. [Carrier's File M-1100-31]

**EMPLOYEE'S STATEMENT OF FACTS:** Mr. A. D. Bohon is the regular assigned Signal Maintainer for this Carrier with headquarters at Carolina Jct., Va. Mr. Bohon's signal maintenance territorial limits are from mile post 4.5 to mile post 30. His assigned hours are from 6:30 A. M. to 3:00 P. M., with thirty minutes off for lunch. The work week of this position is Monday through Friday, with Saturday and Sunday as rest days, and the position is compensated at an hourly rate.

Mr. Bohon's service in the signal department started April 8, 1946.

Mr. Bohon resides 3 miles from his assigned headquarters in South Norfolk, Va., and uses his private automobile to go to and from work. Mr. Bohon is assigned the use of a track motor car and a company truck to perform the maintenance work on his signal maintenance territory.

On July 15, 1957, a signal failure occurred at the interlocking plant at South Norfolk, which is a part of Mr. Bohon's signal maintenance territory. The failure occurred at 7:30 P. M., and the Carrier did not call Mr. Bohon

Schedule, as was done in the case of conductors and trainmen. Consequently, the claim in this case is an attempt to force the carrier to pay for personal telephones.

This matter of payment for personal telephones came up when negotiations were under way leading to signing of the present contract. In their proposals the employees requested that the carrier pay for installation and maintenance of personal telephones. The carrier could see no justification for this. Hundreds of other employees on the railroad who are needed for service outside their assigned hours have their own telephones. Furthermore, as stated above, it appeared to the carrier that a person interested in employment in his off-hours would secure a modern method of having himself notified. The carrier consequently told the employee representatives it could not agree with this request and if the employees saw fit not to have telephones it would have to get the work done by employees who could be reached.

Thus this question of payment for private telephones of signal maintainers has been discussed between the parties on several occasions but no agreement for the carrier to make such payment has ever been made. If, however, the employees, by means of these present claims could, by merely having their phones removed, force the carrier to pay for personal phones as the only practicable method of notifying them they would have gained their point without agreement. It seems clear to the carrier that such is the purpose of this case.

The carrier has thus shown that claimant Bohon, by the removal of the phone from his residence in April, 1957, deprived himself and the carrier from the established and accepted means of communication; that this means of communication under the agreement had been in effect ever since Bohon had been on the job as well as ever since there have been signal maintainers on the railway; that the carrier, without any obligation on its part to do so, attempted to find some reasonable and practical alternate method of notifying claimant, such as by telegram, or by notifying neighbors who had phones but without success; that making a call by telephone is the only method compatible with the schedule and legal requirement of operating with efficiency; and that the evident and obvious purpose of this claim is to force the carrier to pay for the employee's personal home telephone.

The claims in this case should be declined.

All data included in support of the Carrier's position have been handled with the employees on the property.

**OPINION OF BOARD:** There is no dispute concerning the facts. We have read with care all of the past awards submitted by the respective parties herein. They can be distinguished either on the facts or on the terms of the rule involved.

Rule 314(f) reads as follows:

"Employees assigned to or filling vacancies on regular maintenance assignments and paid on an hourly basis will respond to calls when called. Assignee filling position will be called unless registered absent."

Rule 314(f) supra is the result of an Agreement between the Carrier and the Organization. It is clear and unambiguous, and if it contains deficiencies

detrimental to either party, we are committed to its provisions. This Board lacks authority to vary, alter, or amend its terms.

This rule contains a mandatory provision that it will call the Claimant unless registered absent.

The Claimant did not register himself absent when he responded to Carrier's request for information to keep their records up to date.

Their request was as follows:

"In order to keep our records up to date please advise me your correct home address also give telephone number."

This was merely a request for information, and not a formal declaration that the Claimant is registered absent.

The Agreement was violated.

**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 the Agreement was violated.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1963.

#### Carrier Members' Dissent to Award 11225, Docket SG-10664

The conclusions of the majority members in this particular case reflect either a complete misunderstanding or flagrant disregard of the evidence which fully supported carrier's position and called for a denial award. Numerous prior awards were cited by carrier to show that it is the recognized practice on railroads to call employees of the various crafts by telephone when their services are required outside assigned hours, and the record in this case contained clear and unmistakable evidence that such practice had existed for many years on this property in calling signal maintainers for service under the provisions of Rule 314(f).

Claimant lived about four miles from headquarters, and when he bid in and was assigned to the signal maintainer position with headquarters at Caro-

lina Junction, Va., he furnished carrier his address and home telephone number. For five years, 1952 to 1957, when signal trouble occurred on claimant's territory outside his regular working hours, carrier called him at his residence by telephone through the operator on duty at Carolina Junction. Then in April, 1957, claimant had the telephone company remove the telephone from his residence, thus making it impossible for the lone operator on duty in the tower at Carolina Junction to call him.

The construction placed by the majority on carrier's letter to claimant is incredible. By removal of his telephone, claimant had made himself inaccessible for calls, and the Signal Supervisor's letter was sufficient notice to claimant that he would continue to be absent from call under Rule 314(f) until he furnished his address and telephone number. It is difficult to understand how claimant could be rewarded and carrier held responsible, and penalized, for a condition brought about by claimant's unilateral and deliberate action.

If there was any violation or failure to meet the requirements of Rule 314(f), it was committed by claimant, not the carrier. For the reasons stated, this award should be considered null and void.

**/s/ R. A. DeRossett**

**/s/ R. E. Black**

**/s/ W. F. Euker**

**/s/ G. L. Naylor**

**/s/ W. M. Roberts**