

Award No. 11994
Docket No. SG-11354

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company that:

- (a) The Carrier violated the current Signalmen's Agreement, particularly Rule 18(a), when it failed to call Signal Helper F. M. Grant with regular assigned headquarters at Walton, Ky., for service to be performed on the Walton, Ky. signal maintenance territory on March 14, 1958.
- (b) The Carrier now be required to compensate Signal Helper F. M. Grant for a minimum call at the rate of a Signal Maintainer account of the violation cited in part (a).
[Carrier's File: G-357-2, G-357]

EMPLOYES' STATEMENT OF FACTS: Mr. F. M. Grant is regularly assigned to the Signal Helper position with headquarters at Walton, Ky. Mr. Grant is assigned to work with Signal Maintainer D. Cochran on the Walton, Ky., signal maintenance territory.

On March 14, 1958, signal trouble occurred on the Walton, Ky., signal maintenance territory at Signal No. 831 which caused train No. 73 to stop at Verona, Ky.

The Carrier did not call either of the regular assignees, Signal Maintainer Cochran or Signal Helper Grant, for the service that was to be performed on the Walton signal maintenance territory on March 14, 1958.

Inasmuch as both regular assignees were available and not registered as absent, a claim was filed by Local Chairman J. T. Bass in behalf of Signal Helper Grant for a minimum call of two hours and forty minutes at the overtime rate of a Signal Maintainer account not being called to perform the overtime work that properly accrued to the regular assignees of the Walton signal maintenance territory. The claim was filed with Mr. Frank Hacker, Signal Supervisor, under date of April 25, 1958, and read as follows:

Carrier submits there is no basis for the claim and same should, therefore, be denied.

All matters referred to herein have been presented, in substance, by the carrier to representatives of the employes, either in conference or correspondence.

OPINION OF BOARD: The claim is filed on behalf of Signal Helper F. M. Grant with assigned headquarters at Walton, Kentucky. Grant was assigned as a Helper with Signal Maintainer Cochran. Signal trouble was reported at 4:00 A. M. Maintainer Cochran did not have a telephone in his home and it was the practice to call him through Helper Grant who would notify the Maintainer. The Carrier alleges that the Night Chief Dispatcher tried to call Claimant Grant at the time the signal trouble was reported but was unable to get an answer. Since there was no emergency and it was impossible to contact Grant Maintainer Cochran was instructed to make the necessary repairs which were done the next day during regular working hours.

Petitioner claims that the Carrier did not try to call the employes involved and since the employes were regularly assigned to this work and were available the provisions of Rule 18(a) of the Agreement became operative. The claim was filed under this rule for a minimum call of two hours and forty minutes at overtime rates.

The Carrier states that efforts were made to call the Claimant but he did not answer his phone. The Organization states flatly that no call was made. There is an irreconcilable dispute as to the facts. Apart from contrary bald assertions the record is devoid of evidence in support of either assertion. Under these circumstances it is impossible to resolve this dispute. Absent proof it must be held that the Carrier did not violate its Agreement.

It should also be noted that the necessary repairs to the signal were made by the signal maintainer assigned to the territory during his regular working hours. The Carrier had the right to determine when to have the work performed, and the exercise of such right could not be a proper basis for any claim under the Agreement.

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 Carrier did not violate the Agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1963.