Award No. 12938
Docket No. SG-12003

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District) that:

(a) The Carrier violated the current Signalmen's Agreement, in particular Rule 1 (Scope), when on April 12, 1959 at 5:00 P. M. it called and used a Track Laborer to assist Signal Maintainer in connection with interruption of the signal system on the Meadow Creek signal maintenance territory (Track Laborers hold no seniority or other rights in the Signalmen's Agreement).

(b) The Carrier now compensate Signal Helper J. H. Richmond, regular assignee to the Meadow Creek signal maintenance territory, under the provisions of the call rule (Rule 24) in the amount of a minimum call (4 straight time hours) at the applicable Signal Helper's rate account of not being called (in place of Track Laborer) to assist Signal Maintainer as defined in part (a) of this claim.
[Carrier's File: SG-144]

EMPLOYES' STATEMENT OF FACTS: When this dispute arose, Mr. C. C. Corker was the regularly assigned Signal Maintainer at Meadow Creek, West Virginia, and Mr. J. H. Richmond, the claimant in this dispute, was his regularly assigned Helper.

While Signal Maintainer Corker was on his 1959 vacation his position was filled by Mr. H. S. Gwinn, so Messrs. Gwinn and Richmond worked together on the Meadow Creek signal maintenance territory.

During the period Mr. Gwinn was relieving Mr. Corker, arrangements had been made whereby Helper Richmond would receive telephone calls in connection with interruption of the signal system on the Meadow Creek territory, and he would then convey the information to Mr. Gwinn. This arrangement was made in case Mr. Gwinn was needed outside regular working hours.

then was an employe under another agreement used to meet the emergency. The work was paid for under the Signalmen's Agreement in forthright manner, all of this immediately dispelling any urge that anyone was in any manner seeking to evade any of the rules of the Signalmen's Agreement.

Common carriers are universally criticized when passenger trains are late, and all concerned in what took place on April 12, 1959, obviously acted to protect against any unnecessary delay to such trains.

The claim in this case is without merit and should be declined in its entirety.

OPINION OF BOARD: The following facts are not in dispute:

About 5:00 P. M. on Sunday, April 12, 1959, two signals were reported out of order. No Maintainer was available in the immediate vicinity, so the Train Dispatcher assigned one from another nearby point. Said Maintainer attempted to get his regular assigned assistant to help him get his motor car put on the track for the trip to the signal failure but found that he was not available. He then attempted to enlist another Assistant Signalman who lived in the vicinity but discovered that he was not at home. He next tried to get an assistant from a signal gang which was working in camp cars in the vicinity, but found that the crew had gone off duty for the weekend.

At this point, the Maintainer drafted a Section Laborer living in the area to help him get the car on the road and to accompany him on the trip to the disabled signals. Together they located the source of the trouble and made necessary repairs.

The track laborer was paid a call of 4 straight time hours at the Signal Helper's rate.

It is conceded that the Claimant, who resides about 30 road miles from where the Maintainer was located, was the senior eligible employe for the work in question and also that no attempt was made to call him.

Carrier takes the position that the Claimant was not "available" because of the excessive amount of time it would have taken him to reach the Maintainer's location. It regards the situation to have constituted an emergency, inasmuch as the signal breakdown occurred at 5:00 P. M. and a first class passenger train was scheduled to pass the point of trouble at 5:55 P. M.

The scope and seniority rules of the Agreement are supported in more explicit terms by Rule 17 (g) which expressly provides that "available unassigned employes" are to be called for work arising on unscheduled days.

The question here to be decided is whether or not Signal Helper J. H. Richmond was truly "available" for the assignment. The Carrier does not question the possibility that the Claimant may have been available in the sense that he was home and able to make the trip and do such work as would be assigned to him at the end of the trip. No effort was made to determine this. The only sense in which the Carrier contends that the Claimant was unavailable is in his inability to arrive on the scene without serious prolonged detriment to operations, even if he could have been promptly reached by phone and had proceeded immediately to the assignment with all diligence and dispatch.

Although the Agreement does not expressly provide for deviations from the applicable Rules when emergencies are present, we have held that under unavoidable exigencies requiring the speedy presence of an employe as an alternative to prolonged impairment of operations, that employe, even though enjoying priority of assignment under the Agreement, who clearly cannot get to the assignment in the needed time, may be regarded as not being truly "available" in realistic terms. We stated in Award 9968:

> "The assignments complained of arose directly from and as an incident of an emergency situation. . . . Time was of the essence in designating the extra conductors, and schedules, including the deadheading arrangements, had to be speedily worked out and accomodated. . . . It is our conclusion that in this specific factual situation, Claimants were not in the "available" status contemplated by Rule 38 (a) and Carrier cannot be held to have violated the Agreement. The Claim will be denied."

In the instant matter, the Maintainer made a good faith justifiable judgment that the Claimant was not "available" within the needs of the situation. He was faced with a breakdown of unknown cause and dimensions with a passenger train due in approximately forty to forty-five minutes. The eligible employe was situated at a point, forty-five minutes' to one hour's drive from the place at which a motor car had to be moved onto the track, the two then to proceed to the scene of the trouble for a search of the cause and then undertake repair measures. Understandably, he chose that alternative which offered obvious possibilities for the needed quick response to the emergency. He thus exercised the latitude we have permitted the Carrier to make under such special circumstances. (Awards 10181, 10965, 11241.)

Under these circumstances, the Carrier should not be held to have violated 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1964.