

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ross Hutchins, 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:

On behalf of Leading Signal Maintainer C. M. Wells, Athens, Alabama, for compensation at the double-time rate of pay of his regular position from 3:00 P.M., February 13, 1960, until 11:30 A.M., February 14, 1960, account of being relieved from duty on his regular assigned territory and being replaced by employees from other territories and/or crafts; and on behalf of Signal Helper Earl Davidson, Athens, Alabama, for compensation at the double-time rate of his regular position from 3:00 P.M., February 13, 1960, until 6:00 A.M., February 14, 1960, account of being relieved from duty on his regular assigned territory and being replaced by employees from other territories and/or other crafts.

[Carrier's File: G-304-12; G-304]

EMPLOYEES' STATEMENT OF FACTS: The Claimants in this dispute, Leading Signal Maintainer C. M. Wells and Signal Helper Earl Davidson, were called to work by the Carrier at 11:00 P.M., Friday, February 12, 1960, account of an ice storm. They worked until 3:00 P.M., Saturday, February 13, 1960, at which time they were sent home by the Carrier and replaced by a Signal Maintainer from an adjoining territory and a Track Laborer who worked until 11:30 A.M., Sunday, February 14, 1960. The work involved in this dispute was performed on the Claimants' regular assigned territory.

This claim is for compensation at the double time rate of pay for Leading Signal Maintainer Wells from 3:00 P.M., Saturday, February 13, 1960, until 11:30 A.M., Sunday, February 14, 1960. This is the period of time spent by the Signal Maintainer from the adjoining territory and the Track Laborer on the territory assigned to the Claimants. The claim on behalf of Signal Helper Davidson is for compensation at the double time rate of pay of his position for the same hours, except that the Carrier and Organization agreed on the property to limit his claim to the extent that he would not

In view of the circumstances involved, carrier contends there is no basis for the claim, and same should, therefore, be denied.

OPINION OF BOARD: On the night of February 12, 1960, a severe snow storm and freeze occurred which threatened to severely impede all operations of the railroad. Maintenance of Way employes were called to keep ice and snow off of the switches and street crossings. This type of work ordinarily belongs to the Maintenance of Way employes. However, on this occasion, the signal employes were also called out to augment the available maintenance of way forces.

The Claimants, a Leading Signal Maintainer and a Signal Helper, were called to work at 11:00 P. M., Friday, February 12, 1960. The Claimants worked until 3:00 P. M. Saturday, February 13, 1960, at which time they were relieved by the Carrier and replaced with a signal maintainer from adjoining territory and a track laborer. The replacement employes continued from 3:00 P. M. on Saturday until 11:30 A. M. Sunday, February 14, 1960.

As a result of these circumstances, the Leading Signal Maintainer contends for compensation for double-time rate of pay of his regular position from 3:00 P. M. February 13, 1960, until 11:30 A. M. February 14, 1960. The Signal Helper contends for double-time rate of pay from 3:00 P. M. February 13, 1960, until 6:00 A. M. February 14, 1960, which was the time he reported in ill and, accordingly, would be unable to receive compensation from the 6:00 A. M. February 14, 1960 to 11:30 A. M. February 14, 1960, even if the claim is sustained.

To substantiate its position the Brotherhood contends that the following three (3) rules have been violated: 15(h), 17(c) and 18(a).

Rule 15(h) provides as follows:

"Where work is required to be performed on a day which is not a part of any assignment, it may be performed by an available furloughed employe in accordance with the agreement who will not otherwise have 40 hours of work that week; in all other cases by the regular employe."

This rule, however, will not substantiate the claim, as there is no regular employe during an emergency. Work which does not exist except during an emergency does not by its nature create a regular position. Any position which is created by an emergency is by its nature temporary, and its position is limited not only by the duration of the emergency, but, also by the length of time a man can reasonably effectively provide a service. This is not to say that there are not people filling regular positions during an emergency for the maintenance of way people were performing functions which they regularly performed.

Rule 17(c) provides as follows:

"After 16 hours of actual service in any 24-hour period, all subsequent service within that period shall be paid for at double time rate until relieved. The 24-hour period is computed from the beginning of the employes' regular starting time, any rest day or holiday time accruing under this rule to be figured on the same basis as on a regular work day. An employe on double time at the start of his regularly assigned shift may, if possible, be released from

the emergency which required his service or other emergency service which developed after he was called. When so released, he shall work his regular shift at straight time rate. When not so released from emergency service he shall continue on the double time rate until relieved from duty."

Rule 17(c) relates only the amount of compensation, and is relevant to this case but material only if the claim is sustained.

Rule 18(a) provides:

"Employees assigned to or filling maintenance positions will notify the management where they may ordinarily be called. If on specific occasions they desire to be off call, they will so advise the person designated for the purpose. Unless registered off call, they will be considered as available and will be called for service to be performed on their assigned territory, and will respond as promptly as possible when called."

This rule contemplates that when one is registered off call, he will not be considered as available for service. One can be registered off call by ways other than giving formal notice. At least one of those ways is when his physical condition does not permit the Claimant to be of reasonable service to the Carrier. The Claimant had worked 24 out of the previous 32 hours prior to the relief of which they complained. After being relieved at 3:00 P.M. on the 13th, Claimant Wells returned to work on the 14th at 6:00 A.M. and worked for 12 hours that day. However, Claimant Davidson reported sick and unable to work when called to report at 6:00 A.M. on the 14th.

The company was not only justified in what it did; few, if any other, actions would have been appropriate.

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 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1965.

DISSENT TO AWARD NO. 13340, DOCKET SG-13092

The Majority commits several serious errors in Award No. 13340. First, it is stated:

"* * * there is no regular employee during an emergency."

Rule 18 of the controlling agreement (all of which was before the Board) governs the calling of signal employees for emergency service; that rule states, in part:

"(a) Employees assigned to or filling maintenance positions will notify the management where they may ordinarily be called. If on specific occasions they desire to be off call, they will so advise the person designated for the purpose. Unless registered off call, they will be considered as available, and will be called for service to be performed on their assigned territory, and will respond as promptly as possible when called."

Obviously, there are regular employees during an emergency, and the Majority is unsupported in its assertion.

The next error committed by the majority lies in its holding that one can be registered off call by means other than giving formal notice, implying that, at the time relieved, the claimants were automatically registered off call because of the number of hours they had been on duty (sixteen hours since called). This implication is also contrary to the requirement of Rule 18(a) that "Unless registered off call" they will be considered as available and will be called, and to the provision of Rule 17(c) for the payment of double time "after 16 hours of actual service." Thus, the Majority's implication that an employee is not available for some reason other than "unless registered off call" is highly presumptive, and does violence to the clear intent of the agreement, especially Rule 18(a). It is obvious that the carrier did as it did solely for the purpose of avoiding the payment of double time, and that the Majority has now aided and abetted the carrier's violation.

The Majority's comments concerning the 24 hours worked by the claimants out of the previous 32 is irrelevant because it is shown that that period had been interrupted by a substantial period of rest, in addition to the rules of the agreement to the contrary. Similarly, the fact that claimant Wells reported sick serves only to limit his claim to the period during which he was available.

The carrier and the Majority are not justified in what they have done. Award 13340 is in error; therefore, I dissent.

W. W. Altus
For Labor Members