

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

Nathan Engelstein, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**  
**HUDSON & MANHATTAN RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Hudson and Manhattan Railroad Company:

In behalf of Signal Repairman G. S. Cone, with headquarters at 33rd Street, for eight (8) hours at the punitive rate of pay, for Friday, February 19, 1960, account Carrier assigning junior employees to perform overtime service. [Carrier's File: Time Claim No. 161]

**EMPLOYEES' STATEMENT OF FACTS:** Leading Signal Repairman R. Warwinsky and Signal Repairmen R. Clark and C. Hines were assigned to headquarters at Hudson Terminal. Signal Repairman G. S. Cone, the Claimant in this dispute, was assigned to a headquarters at 33rd Street.

The regular tour of duty of the above-listed employees was from 12:00 Midnight until 8:00 A.M. with a work week of Monday through Friday. Although the above-listed employees are assigned to different headquarter points, they are subject to daily assignment by the Signal Foreman and on occasion are assigned to work together.

On Friday, February 19, 1960, Leading Signal Repairman Warwinsky, Signal Repairmen Clark, Hines, and Cone, and other Signalmen were working during their regular tour of duty (12:00 Midnight to 8:00 A.M.) in the area of Caissons 1, 2 and 3.

Due to flooding conditions in Caissons 1, 2 and 3 it was necessary that the Carrier assign some of the employees to work overtime beyond the end of their regular tour of duty. Signal Repairman Cone was the senior of the employees listed above but was not permitted to work the required overtime. Instead, the Carrier arbitrarily assigned three junior employees, Leading Signal Repairman Warwinsky and Signal Repairmen Clark and Hines, to perform the overtime work which consumed 8 hours.

Signal Repairman Cone, being the senior employe of those available, filed a claim for eight (8) hours at the time and one-half rate account his being denied the right, on the basis of his seniority, to work the overtime in preference to the junior employees.

The Organization has demanded that claimant be compensated at the time and one-half rate. Although the claim is without merit, and claimant should receive no compensation, it should be noted that under no condition is a claimant entitled to penalty pay for work which he has not performed. See Third Division Awards 6586, 6664, 6702 and 7242.

### CONCLUSION

Carrier submits that the employee's claim is without merit and should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** For the reasons stated in Docket SG-12382, we hold that the Agreement was not violated.

**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 of the parties 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 April 1965.

### DISSENT TO AWARD 13568, DOCKET SG-12720

My Dissent to Award 13566 also applies to this case.

G. Orndorff  
Labor Member