

Award No. 14007

Docket No. SG-14002

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
THE PENNSYLVANIA RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on The Pennsylvania Railroad Company that:

(a) The Carrier violated and is continuing to violate Article 1, Sections 2 (a) and 3 of the current agreement, when, on July 9, 1961, at 5:00 P. M. it assigned Maintainer's work to the Leading Maintainer without the assistance of a Maintainer. Leading Maintainer R. E. Everetts was notified that there was a TOL at Day Tower.

(b) Signal Maintainer S. C. Sunday be paid 2.7 hours at the overtime rate. [System Docket 347 — Philadelphia Region Case 16672.]

EMPLOYES' STATEMENT OF FACTS: This dispute arose as a result of the Carrier assigning a Leading Maintainer to perform Maintainer duties without the assistance of a Signal Maintainer or Signaller outside of regularly assigned hours. Under the effective Agreement, a Leading Maintainer and a Signal Maintainer are different classifications of employees.

The following is a brief resume of the events leading to this dispute:

At 4:45 P. M. on Sunday, July 19, 1961, "F" Office reported a track occupancy light at "Day" Tower. Subsequently, J. T. Turski, on whose section the trouble in question occurred, was called but no one answered his phone.

Then, the Carrier called Leading Maintainer R. E. Everetts, who is headquartered at Lemoyne, Penna., and he responded to the call. Claimant S. C. Sunday, a Signal Maintainer, also headquartered at Lemoyne, Penna., was not called. Claimant Sunday could have responded as soon as Leading Maintainer Everetts, since both are headquartered at Lemoyne, Penna.

The Carrier bases its position in this case on the contention that an emergency existed and, that in an emergency, Management is not restricted to calling any certain class of employee to make repairs.

The Employees base their position in this case upon Article 1, Section 2(a) of the current Agreement which defines a Leading Maintainer as a Maintainer

your Honorable Board consistently has held to be the responsibility of the party making the claim.

Finally, it will be noted that in paragraph (b) of their Statement of Claim, the Employees state that the Claimant "be paid the total of 2.7 hours at the overtime rate."

In awards too numerous to require citation, your Honorable Board has consistently refused to allow punitive rate for time not worked. Therefore, if it should be decided, contrary to the evidence set forth above, that a sustaining award is here indicated, the Claimant would under no circumstances be entitled to more than 2.7 hours' pay at the straight time rate.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act in Section 3, First, Subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out "of grievances or out of the interpretations or application of Agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties thereto. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that no rule of the applicable Agreement supports the claim of the Employees and no violation of said Rules Agreement could possibly have occurred.

Therefore, your Honorable Board is respectfully requested to dismiss or deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: On Sunday, July 19, 1961 at 4:45 P. M "F" Office at Harrisburg, Pennsylvania, was informed of three track occupied lights (TOL's) at "Day" Tower. These TOL's prevented the operation of Switches, Nos. 23, 25 and 27. "F" Office immediately phoned Signal Maintainer J. T. Turski, the Maintainer on whose section the trouble occurred. There was no response. Carrier then phoned Leading Maintainer R. E. Everetts whose territory embraces "Day" Interlocking. He responded, located the trouble, and corrected it.

Petitioner claims that Carrier violated the Agreement by assigning a Leading Maintainer to perform Maintainer duties without a Maintainer or Signalman being present. It therefore requests 2.7 hours overtime pay for Signal Maintainer S. C. Sunday who, it says, could have responded as soon as Everetts since both are headquartered at Lemoyne, Pennsylvania. (Sunday's territory, however, did not include "Day" Interlocking.)

Article 1, upon which Petitioner relies, describes a Signal Maintainer as:

"An employe qualified and assigned to perform the work of a Mechanic in the Telegraph and Signal Department." (Section 3.)

A Leading Maintainer is described in Section 2 (a):

"A maintainer working with and assigned to supervise the work of one or more signal maintainers, telegraph and signal maintainers, telegraph and telephone maintainers, or signalmen, with or without their assistants or helpers. The number of employes so supervised shall not exceed a total of five (5) at any one time. This paragraph does not apply to employes regularly assigned to and held responsible for the inspection, testing and repairs of relays, insulated wire or locking."

Petitioner argues, in substance, that (1) the Agreement clearly defines a Leading Maintainer as a Maintainer working with and assigned to supervise the work of other employes; (2) on July 19 Everetts did not work with or supervise other employes; (3) Everetts holds a job by Bulletin and, accordingly, cannot be assigned to work except as specified in the Bulletin; (4) the only exception provided for in Section 2 (a) is not applicable to this case; (5) Carrier had no excuse for not calling a Maintainer.

The facts and arguments here are virtually identical with those in Award 13819 which concerned these parties, this Agreement, and an event occurring in May 1961. Here, as in Award 13819, Carrier first called the regular employe on whose territory the trouble occurred, in accordance with Article 2, Section 23 (h). The only question, then, as in Award 13819, is whether Carrier may properly call upon a Leading Maintainer to perform the work without the assistance of a Maintainer. We see no reason to depart from the finding in Award 13819 which rejected Petitioner's contention on this score. See also Award 12536, involving a similar claim on a different Carrier.

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 10th day of December 1965.