

Award No. 14161
Docket No. SG-14364

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Herbert Schmertz, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al:

On behalf of Signal Maintainer A. E. Scalf, Sevier Yard, Tennessee, a minimum call of two hours and forty minutes at the overtime rate account Carrier called a junior employe for overtime work on June 27, 1962.

(Carrier's File: SG-17968)

EMPLOYEES' STATEMENT OF FACTS: There are five (5) Signal Department employes who are regularly assigned to work at Sevier Yard, Knoxville, Tennessee. Mr. S. E. Gibbons, the first trick Signal Maintainer, works Monday through Friday as do an Assistant Signaller and a Helper.

Mr. A. E. Scalf is the second trick Signal Maintainer and his assignment is from Thursday to Monday with Tuesday and Wednesday as relief days.

Mr. P. D. Kennedy is the Relief Signal Maintainer whose assignment is Saturday through Wednesday with consecutive rest days of Thursday and Friday.

According to seniority, Mr. Gibbons is the oldest followed by Messrs. Scalf and Kennedy in that order.

Inasmuch as there are only two shifts employed, it was recognized that there would be times when a maintainer was needed between the hours of 12:00 midnight and 7:00 A. M. when no employes were regularly working and occasions would arise wherein additional help would be needed, the General Chairman and the Signal and Electrical Supervisor reached an understanding of the manner in which the five (5) employes would be called under the Agreement to perform overtime service. That understanding is contained in a letter from Supervisor A. J. Zink under date of July 13, 1961, which is reproduced as Brotherhood's Exhibit No. 1.

In order to show the manner in which it was intended this understanding was to be applied the Brotherhood is reproducing pertinent correspondence relative to a prior dispute of a similar nature, as follows:

Signal forces at Sevier Yard were assigned a work week of 40 hours consisting of 5 days of 8 hours each with two consecutive days off in each 7. The daily hours, the assigned work days and rest days of each employe are shown in detail in Carrier's statement of facts.

Signal Maintainer Gibbons was assigned to the first shift Monday through Friday with consecutive rest days of Saturday and Sunday.

Signal Maintainer Scalf was assigned to the second shift Thursday through Monday with consecutive rest days of Tuesday and Wednesday.

Signal Maintainer Kennedy occupied the regular relief assignment and was therefore assigned to the first shift Saturday, Sunday and Monday, and to the second shift Tuesday and Wednesday with consecutive rest days of Thursday and Friday.

Assistant Signal Maintainer Linebarger and Signal Helper Stephenson were assigned to the first shift Monday through Friday with consecutive rest days of Saturday and Sunday.

On Wednesday, June 27, 1962, Signal Maintainer Scalf was observing one of his assigned rest days. Signal Maintainer Kennedy was regularly assigned to work that day 4:00 P.M. to 12:00 midnight. The switch machine at switch No. 19 in the retarder yard had been damaged due to derailment of a car and had to be replaced. Signal Maintainer Gibbons was on duty and needed assistance. Assistant Signal Maintainer Linebarger was on vacation. Signal Maintainer Kennedy was therefore called at 2:20 P.M. in advance of his starting time. He reported promptly, and assisted in the performance of generally recognized signal work in the installation of a switch machine in lieu of the machine damaged by derailment of the referred to car. After completion of this work at 4:00 P.M. he filled his regular assignment and was relieved from duty at 12:00 midnight. For such service he was paid for 8 hours at straight time and 1 hour 40 minutes overtime in accordance with the last paragraph of Rule 35 of the effective agreement.

Under no provision of the agreement was the Carrier under any contractual obligation to call Signal Maintainer Scalf. He was observing one of his assigned rest days. He certainly has no contractual right to the compensation here demanded on his behalf. The claim is not supported by the agreement and should therefore be denied.

OPINION OF BOARD: The facts of this case are not in dispute. On the date in question the Carrier called employe Kennedy to work one hour and forty minutes prior to his regular starting time. The Grievant, A. E. Scalf, claimed that since he had more seniority than Kennedy he should have been called. As a consequence he is claiming two hours and forty minutes pay.

The Carrier takes the position that Rule 35 allowed it to take the action it did. The specific portion of that rule relied upon by the Carrier is as follows:

"Time worked in advance of and continuous with regularly assigned hours shall be computed on actual minute basis and paid for at the rate of time and one-half with a minimum of one (1) hour."

The Union takes the position that although there is no specific rule in the agreement explicitly requiring the following of seniority in such cases, the awards of this Board have consistently upheld the application of seniority in determining work assignment of overtime.

It is our view that unless there is a rule in the agreement or a negotiated local practice providing for the assignment of overtime on some basis other than seniority, that seniority should be the determining factor. This Board has so held on a number of occasions.

This then brings us back to Rule 35 and a consideration of whether it is of such a nature as to allow the Carrier to make assignments in disregard to seniority. We think it is not. Rule 35 in our opinion merely establishes a payment system for certain circumstances. It does not require the calling of the employees due to start work.

In view of this we see no reason for the Carrier not to have followed seniority in this case.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 was violated.

AWARD

Claim allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 11th day of February 1966.