

Award No. 14577
Docket No. SG-14122

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

BIRMINGHAM TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Birmingham Terminal Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when it relieved Assistant Signal Maintainer W. E. Mills from duty at 11:30 P. M. on January 9, 1962, thereby depriving him of double time pay provided for in Rule 21 of that Agreement, and then assigned and/or permitted employes not covered by that Agreement to assist the Signal Maintainer in clearing interlocking plant trouble caused by ice and snow which prevented the switches from operating properly.

(b) The Carrier be required to compensate Mr. Mills at the double time rate of pay for the period from 11:30 P. M., January 9, 1962, until he was returned to duty at 6:30 A. M. on January 10, 1962, plus the difference between the double time rate of pay and what he was actually allowed between 6:30 A. M. and 5:30 P. M. on January 10, 1962. [Carrier's File: SG-17398]

EMPLOYEES' STATEMENT OF FACTS: The Claimant, Mr. W. E. Mills, was working as an Assistant Signal Maintainer at the time this dispute arose. He was working with Signal Maintainer J. J. Blankenship, Jr., while the regularly assigned Signal Maintainer, Mr. J. E. Channell, was on vacation. Their regular work day was from 6:30 A. M. to 3:00 P. M.

A severe snow storm required signal employes to be on duty day and night from January 9, 1962, until 6:30 A. M., January 13, 1962, at which time the snow and ice condition that was causing signal and switch failures was finally eliminated.

This dispute arose as a result of the Carrier's action of relieving the Claimant at 11:30 P. M. on January 9, 1962, and then assigning other than signal employes to assist the Signal Maintainer in clearing trouble, on the Interlocking Plant, that was due to ice and snow. It is being progressed on the basis the work of cleaning ice and snow from the switches in question

and ice from platforms and switches. With the exception of the period beginning at 11:30 P. M. on January 9 and continuing to 6:30 A. M. on January 10, 1962, during which Mr. Mills did not work, the employes have made no complaint and have not presented any claims alleging violation of the agreement because laborers were utilized to sweep ice and snow from platforms and switches and spread salt during the emergency existing from January 9 to January 13, 1962. Claim before the Board was presented to the Superintendent, Birmingham Terminal Company, by the Local Chairman by letter dated January 31, 1962, in which the Brotherhood complained, not because laborers were utilized, but simply because Mr. Mills was relieved from duty and not permitted to work during hours in excess of 16 at the double time rate of pay from 11:30 P. M. on January 9 to 6:30 A. M. on January 10, 1962.

Correspondence exchanged between the parties during handling of claim on the property, identified as Terminal Company's Exhibits A through L, is attached hereto and made a part hereof.

That there is no basis for the claim and demand presented to the Board by the Brotherhood will be hereinafter evidenced.

(Exhibits not reproduced.)

OPINION OF BOARD: In this claim a severe snow storm required signal employes to be on duty both day and night from January 9, 1962, until 6:30 A. M., January 13, 1962.

The regularly assigned Signal Maintainer, J. E. Channell, was on vacation, J. J. Blankenship, Jr. was working as Signal Maintainer and the Claimant, W. E. Mills, was working as an Assistant Signal Maintainer with Blankenship, during the instant dispute. Their regular work day was from 6:30 A. M. to 3:00 P. M.

Blankenship and Mills worked their regularly assigned hours January 9, 1962, and then continued on overtime. Blankenship worked straight through until 3:00 P. M., January 10, 1962, when Channell was called back from his vacation. Mills was relieved at 11:30 P. M. on January 9, 1962 and was not permitted to resume work until his regular starting time (6:30 A. M.) January 10, 1962, when he worked until 5:30 P. M.

There are several subordinate issues raised in this claim which do not seem to us to be determinative of the question in dispute.

First, the Organization raises the point that the Carrier relieved Mills at just the time he would have gone on the double time rate of pay. This does not appear to be a violation of the rules per se, and is probably interjected only in an effort to show some ulterior motive or intent of the Carrier.

Secondly, we are presented with a controversy concerning the work involved in the dispute. The question seems to turn on the proposition of whether the work involved trouble which manifested itself through the signal system. Although the Brotherhood's Exhibit No. 14 is in the form of a self serving declaration, we are unable to find a more concise statement of the Claimant's position in the record, and so we will quote it here for whatever benefit it may be to clear up the confusion surrounding the nature of the work involved.

"4270 Third Avenue South
Birmingham 12, Alabama
May 14, 1962

Mr. E. C. Melton
1704 Second Avenue West
Birmingham, Alabama

Dear Sir:

I wish to make the following statement in regard to the claim for time due as a result of work performed by others during the period of snow at the Birmingham Terminal Company in the first half of January, 1962.

I was working on the north-end of the interlocking plant trying to keep traffic moving during the heavy snow on January ninth. About 11 P. M. the towerman blew the horn for me and I was informed that the 11 crossover had failed to lock up. I proceeded to this switch with the tools to put it back into operation and while attempting to make repairs, Mr. Cato came by and said, 'Bill, the man said for you to knock off.' I told him I was trying to restore this switch to operation. Then he replied, 'Well, I am just telling you what he said.' So I began to gather up the tools to prevent their being lost in the snow, while I was away. At this time, two colored men came up to me and said they were sent to work on the switches, and what did I want them to do? I told them I was off-duty, and for them to take instructions as to what to do from whoever sent them up there.

Next morning at 6:30 A. M., I went on duty in the South yard. Switches were on constant failure. I never took 20 minutes for lunch until after 2:00 P. M., Wednesday, January 10. I was told to quit at 5:00 P. M. on this date and again left many switches in failure.

Yours truly,

/s/ W. E. Mills
W. E. Mills

[SEAL]

/s/ Dixie Masterson
Notary Public
State at Large Alabama"

There appears to be sufficient evidence in the record, even without considering the statement of the Claimant, to show that the trouble involved, manifested itself through the signal system, and consequently, produced work which belonged to the signalmen.

It is important to us to note that Mills was working as an Assistant Signal Maintainer with the Signal Maintainer Blankenship. The Carrier kept Blankenship on the job and apparently used persons who were not covered by the Signalmen's Agreement to replace Mills during the period he was held off work. We are of the opinion that if the Signal Maintainer needed assistance he should have had the services of the Assistant Signal Maintainer. Therefore, the claim will be sustained as submitted.

This award should not be construed to be in conflict with Awards 11759, 11760 and 11762 wherein there was no showing of any signal failures.

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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June 1966.