

Award No. 14649
Docket No. SG-13656

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Grand Trunk Western Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement on August 9, 1961, when it assigned members of the Flint Terminal Signal Gang to perform signal work on the Lansing Terminal Signal Gang's assigned territory following a derailment.

(b) The Carrier be required to compensate one Leading Signalman and one Signal Mechanic of the Lansing Terminal Signal Gang for five (5) hours at their respective overtime rates of pay account of the violation enumerated in Paragraph (a).
[Carrier's File: 8390-1 (15)]

EMPLOYES' STATEMENT OF FACTS: The Carrier has its line of road divided into several territories between Chicago and Port Huron and each territory is supervised by a Signal Foreman. Each territory is divided into sections which are maintained by Signal Maintainers. In addition, each territory has a Signal Gang under the Foreman who assists the Signal Maintainers in the maintenance of their sections when needed as well as performing any other type of work required.

At 3:50 P. M. on August 9, 1961, a derailment occurred west of Durand, Michigan on the Lansing Terminal Gang's assigned territory. The members of this gang were aware of the derailment shortly after it happened and as they were the proper employees to be called if needed they expected to be notified to report at the scene of the derailment before their regular tour of duty ended at 4:30 P. M. When the expected call did not occur during regular working hours, the Foreman of the Lansing Gang notified the Carrier that he and his gang were available for work and where he and the members of his gang could be reached. The Foreman's notification was made at the end of the gang's tour of duty at 4:30 P. M.

Dear Sir:

Referring to your November 15, 1961 letter appealing the decision of Chief Engineer R. G. Maughan in connection with claim in favor of one leading signalman and one mechanic of the Lansing Terminal Gang account emergency repair work performed on their territory at Durand, Michigan, on August 9, 1961, by members of the Flint Terminal Gang.

As previously stated in my November 1, 1961 letter, the instant claim has not been properly presented and appealed on the property in accordance with the provisions of Article V (Time Limit Rule) of the August 21, 1954 National Agreement, in that the claimants involved have not been named. Inasmuch as the instant claim has not been properly progressed on the property, it must be declined. However, even had the instant claim been properly handled it would still be necessary to decline same for the reasons set forth in Superintendent Rose's letter of September 27th and my letter of October 11th.

Yours very truly,

/s/ H. A. Sanders
Vice President and
General Manager"

OPINION OF BOARD: The facts from which this claim arose are undisputed. At 3:50 P. M. on August 9, 1961 a derailment occurred on Carrier's eastbound main line at Durand, Michigan, resulting in extensive damage to the track and signal equipment. The Signal Maintainer in Durand, Mr. H. Mann, was summoned promptly and commenced repairs on the signal system. At 5:45 P. M. he called Mr. A. O. Murken, Assistant Supervisor of Signals at Flint, Michigan, requesting additional help. Murken proceeded to call two members of the Flint Terminal Signal Gang who departed Flint at 6:15 P. M., arrived at the derailment site at 6:45 P. M., assisted Mann in the repairs to completion, returned to Flint and booked off duty at 11:00 P. M.

The derailment occurred in the territory assigned to the Lansing Terminal Signal Gang by Carrier. This claim is on behalf of two members of the Lansing crew on the basis of the work protection in their assigned territory afforded them by Article 18 of the Agreement between Carrier and the Signalmen. It is conceded they are entitled to such protection under ordinary circumstances — absent a situation of such emergent character as to excuse violation of the Agreement on the part of Carrier.

Certainly, a derailment signals an emergent condition. The immediate restoration of service is in the interest of Carrier and Brotherhood alike.

Blessed with the 20-20 hindsight we now have in this case we may safely "second-guess" Carrier's management. Two hours after the derailment one lone signalman plugs away to restore service. At 4:30 P. M. the gang from which emergency help should have been drawn ended its tour of duty. At such time it honored its responsibility under Rule 18; aware of the derailment, its Foremen notified the Lansing Operator of the gang's availability for any emergency required. Here follows a lack of communication since apparently this intelligence was not forwarded to Mr. Murken at Flint, he being the employe responsible for furnishing personnel to do the repair work.

Since the record is bare of details, we can only speculate as to why Murken, charged with such responsibility, was not more fully aware of the situation. Suffice it to say that this Board believes any derailment demands closer attention to duty than was displayed here by management personnel.

We state further that most emergencies can be anticipated and that all personnel should be fully acquainted with procedures required by such emergencies. Certainly, when signal apparatus is knocked out in a derailment the officer responsible for repairs should anticipate the need of extra help and immediately ascertain its availability from the source to which the work belongs by agreement.

We must view the situation not through hindsight but as of the time of the occurrence and through the eyes of the Carrier official having decision-making authority—in this case, A. O. Murken. He learns of the need for additional help at 5:45 P. M.; in the call for help Signal Maintainer Mann emphasizes urgency in order to take advantage of the waning daylight hours. Murken promptly responds by drafting the two men closest at hand and of whose immediate availability he was fully aware. From the record we may conclude approximately 30 minutes of daylight was thus saved. In hindsight that made little difference. But at the time and in light of the information then available to Murken it could have furnished sufficient justification for violating the Agreement.

In the absence of a crossing of craft lines or of evidence clearly reflecting negligence or bad faith on the part of the decision-maker we are unwilling to impose sanctions on Carrier for violation of the Agreement. See Awards 3875, 10181. While we deplore and discourage contravention of the rules, we think the over-riding consideration should be one of encouragement of prompt exercise of discretion in order that the emergent condition may be expeditiously ameliorated. We limit our decision to this instance.

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 was violated.

AWARD

Claim (a) sustained; Claim (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of July 1966.

DISSENT TO AWARD NO. 14649, DOCKET SG-13656

The Majority in Award No. 14649, while correctly finding that the Carrier violated the unambiguous provisions of its Agreement with its employes, errs in not making the claimant employes whole. We believe that history will confirm that, where a wrong is allowed without a remedy, no effective deterrent to further wrongs has been erected.

The Majority contends that the confronting record presents no evidence reflecting negligence or bad faith and states that we are, in the absence thereof, unwilling to impose sanctions for violation of the Agreement. We can not fathom such reasoning, for Agreement rules regulating the calling of Signalmen have been before this Board many times, and the Board has, when claimants were available, consistently upheld the position here taken by Petitioner and awarded pay appropriate to the work lost to the Claimants. When we consider that our previous awards have been made available to this Carrier and properly charge this Carrier with the responsibility for knowing the terms of its own Agreement with its employes, we find no excuse for the violation.

In any event, we can not again so excuse any Carrier for a violation of a similar agreement provision; surely all have now been put on notice and no "absence * * * of evidence clearly reflecting negligence or bad faith" can again be found.

Award No. 14649 is in error; therefore, I dissent.

W. W. Altus
For Labor Members
8/3/66