

Award No. 15514
Docket No. SG-14846

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Claude S. Woody, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company, that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly Rule No. 1, when it allowed Assistant Supervisor, Mr. J. W. Webb, to change out storage battery for crossing flashers and bell at North Birmingham, Alabama, about 9:00 A. M. on July 5, 1962.

(b) Carrier be required to compensate the senior cut off employe four (4) hours at the basic Signal Maintainer's rate of pay. [Carrier's File: G-304-12; G-304]

EMPLOYEES' STATEMENT OF FACTS: This claim is a result of the diversion of Scope work. On July 5, 1962, at around 9:00 A. M., Assistant Signal Supervisor J. W. Webb, who is not covered by the Signalmen's Agreement changed out storage batteries located at North Birmingham, Alabama. These batteries were exhausted as a result of an outage of power which had lasted for approximately 20 hours.

Because of this violation, Local Chairman K. E. Cheatwood made claim on behalf of the senior cut-off employe of the Birmingham Division for 4 hours pay at the basic Signal Maintainer's rate. The claim was presented in a letter dated August 29, 1962, to Mr. W. G. Ray, Supervisor of Communications and Signals; it is Brotherhood's Exhibit No. 1.

Supervisor Ray denied the claim in a letter dated October 25, 1962, Brotherhood's Exhibit No. 2, in which he stated that he had handled the matter with Mr. Webb and found that no work was performed by him on July 5 at the location mentioned in the claim (North Birmingham).

Brotherhood's Exhibit No. 3 is Local Chairman Cheatwood's letter of December 9, 1962, to Supervisor Ray in which notice was given that his decision was rejected. In addition, the Supervisor was apprised of the fact that there had been a power failure lasting for a period of 20 hours, and

Mr. J. T. Bass, General Chairman
Brotherhood of Railroad Signalmen
Falmouth, Kentucky

Dear Sir:

This has reference to your letter of March 9, 1963, appealing claim in favor of senior cut-off signal employe on the Birmingham Division for 4 hours at pro rata rate of signalman, account Assistant Supervisor Webb changing out storage battery at a location in North Birmingham, July 5, 1962.

On the morning in question the Southern Railway Interlocking Plant in North Birmingham was out of service which required prompt handling. Assistant Supervisor Webb was notified of the trouble, and he made a reasonable effort to locate Maintainer J. D. Norman and the other maintainer at Gate City Tower but found that neither of the maintainers was available. Mr. Webb then replaced three cells of storage battery which consumed about one and one-half hours time.

You were furnished copy of Mr. Webb's statement concerning this instance during conference in this office May 31.

Obviously, in the circumstances which prevailed, prompt handling was necessary. We, therefore, fail to see any basis for the contention that the senior cut-off signal employe on the Birmingham Division is due payment of the claim filed. This confirms declination of the claim made during conference May 31.

Yours truly,

/s/ W. S. Scholl
Director of Personnel"

The agreement involved became effective February 16, 1949, and has been revised to October 1, 1950. Copies of the agreement are on file with the Third Division.

OPINION OF BOARD: Carrier argues that an emergency existed which obviated the necessity of utilizing the Signal Maintainer to perform the services involved. And, further that there are no facts in evidence to justify performance of the services on an overtime basis.

We disagree with Carrier's contention that an emergency existed permitting diversion of the work. The record shows that the situation existed a substantial period of time prior to performance of the service needed and fails to show facts sufficient to rebut the presumption of non-emergency.

The record establishes that the work was performed in approximately ninety minutes during regular working hours. Therefore, we are constrained to sustain the claim to the extent of actual time required to perform the service at the straight time rate.

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 Carrier violated the Agreement.

AWARD

Claim sustained for compensation at the straight time rate for ninety minutes.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1967.