

Award No. 17080
Docket No. SG-17768

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Morris L. Myers, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District) that:

(a) Carrier violated the current Signalmen's Agreement, in particular Rules 24 and 25, when on May 17, 1967, between 4:15 A. M. and 7:30 A. M., it used an employe junior to Signal Maintainer J. W. Peck in clearing signal trouble at the eastward automatic absolute signal at the east end of Summit, Kentucky, and also at the automatic signal between Gulfeo and Summit.

(b) Carrier now be required to compensate Signal Maintainer J. W. Peck at his applicable overtime rate for the comparable time that the Carrier used the junior employe as defined in part (a) of this claim. [Carrier's File: SG-254]

EMPLOYEES' STATEMENT OF FACTS: This dispute arises from Carrier's failure and/or refusal to assign overtime according to seniority. From 4:15 A. M. to 7:30 A. M. on May 17, 1967, an employe junior to Signal Maintainer J. W. Peck was called and used to work in connection with signal failures occurring at the east end of Summit, Kentucky, and between Summit and Gulfeo, which delayed Train No. 392 operating over the Lexington Subdivision.

Leading Signal Maintainer W. E. Tilson, who is senior to Mr. Peck was the first to be called and used. Carrier then called, as the second man to be used, Signal Maintainer S. W. Arrowood. He is junior to Claimant Peck.

Mr. Peck was not called even though he was available and desired to be used for such overtime work. He had sold his former home and bought another in Richardson, Kentucky, after a "group maintenance plan" was placed in effect by Carrier on October 18, 1965. He moved in order to be near to and protect his new position. Richardson is located physically within

may be called and will respond promptly when called. If they are needed for work outside of regular assigned hours, the maintainer on whose territory the work is required will be called first. If not available, another qualified employe will be called. When a maintainer knows that he will not be available for calls on his days off duty, he will notify the designated person and there will be no obligation to attempt to call him. This shall not apply to monthly rated traveling mechanics covered by Rule 54."

OPINION OF BOARD: The claim in this case arose out of the following undisputed facts and circumstances. At approximately 4:00 A. M. on May 17, 1967, two signal failures were reported, one at the east end of Summit, Kentucky, the other between Summit and Guloco, Kentucky. Both locations are west of Ashland, Kentucky. At the time of these signal failures, two trains were scheduled to move from Ashland and were being delayed from doing so due to the signal failures.

The Claimant, J. W. Peck, was a Signal Maintainer assigned to a group of maintainers whose headquarters was at Ashland. However, Mr. Peck lived in Richardson, Kentucky, 46 miles east of Ashland. When the signal failures were discovered, the Carrier called W. E. Tillson, a Signal Maintainer senior to Peck, and S. W. Arrowood, a Signal Maintainer junior to Peck but who lived in Ashland.

The claim herein is that Peck should have been called to help in correcting the signal failures instead of Arrowood because Arrowood was junior in seniority to Peck. The Carrier's defense is that Peck was not "available" because of the distance from his home to the locations of the signal failures.

There can be no hard and fast rule in determining when a man is "available" under the application of Rule 25, the Rule herein involved and which reads as follows:

"RULE 25
WORK OUTSIDE OF ASSIGNED HOURS
(Effective September 1, 1949)

Employes assigned to or filling vacancies on maintainer positions will notify the person designated by the management where they may be called and will respond promptly when called. If they are needed for work outside of regular assigned hours, the maintainer on whose territory the work is required will be called first. If not available, another qualified employe will be called. When a maintainer knows that he will not be available for calls on his days off duty, he will notify the designated person and there will be no obligation to attempt to call him. This shall not apply to monthly rated traveling mechanics covered by Rule 54."

Each case must be determined on the basis of the facts and circumstances involved in that case. In this case, the Board concludes that the Claimant was not "available" under the meaning of Rule 25, and, therefore, the claim will be denied.

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 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 23rd day of April, 1969.