



Award No. 17110

Docket No. SG-17561

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

Jan Eric Cartwright, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**PENNSYLVANIA-NEW YORK CENTRAL TRANSPORTATION COMPANY NORTHEASTERN REGION, BOSTON AND ALBANY DIVISION**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Boston and Albany Railroad (New York Central Railroad Co., Lessee) that:

- (a) Carrier violated the current Signalmen's Agreement, particularly Rules 6, 11 and 20, when, from 11:00 P.M. Saturday, October 22, until 9:30 P.M. Sunday, October 23, 1966, employees junior to Robert J. Tarte were called and used on an overtime basis to work in connection with a derailment at C. P. 22 in Framingham, Mass., in spite of the fact that Mr. Tarte was available for call and lived closer than any of the other employees who were used.
- (b) Carrier be required to pay Mr. Tarte twenty-two and one-half (22 1/2) hours at the overtime rate—the amount he would have earned had he been properly called to work during the above period of time. [Carrier's File:114-B (SG67.1)]

**EMPLOYEES' STATEMENT OF FACTS:** This dispute arises from Carrier's failure and/or refusal to assign overtime according to seniority. From about 11:00 P.M. Saturday, October 22, until 9:30 P.M. Sunday, October 23, 1966, employees junior to Leading Signal Mechanic R. J. Tarte were called and permitted to work overtime in connection with a derailment at C.P. 22 in Framingham, Massachusetts.

Mr. Tarte was available for call and lived nearer the work site than any of the employees who were called for the work. He saw and talked to Signal Supervisor F. Lombardi at the scene of the derailment, however, he was neither called nor told to report for work.

Immediately following this incident, Mr. Tarte was scheduled for and did observe a 5-day vacation period. Brotherhood's Exhibit No. 1 is a photocopy of letter by Supervisor Lombardi to the Leading Signal Mechanic authorizing him to observe his first week of vacation from October 24-28, 1966.

Prior to this incident, for no apparent reason, the Signal Supervisor had issued instructions that Leading Signal Mechanic Tarte was not to be used for overtime. Always before, employees who were senior to Mr. Tarte had

been used for such overtime, and he conceded there was no cause for complaint and claim until this instance. Mr. Tarte is the General Chairman on this property.

On October 28, 1966, he entered a claim for the twenty-two and one-half (22 1/2) hours' overtime pay he would have earned if he had properly been called and permitted to work October 22 and 23, 1966. The claim was filed with Signal Supervisor F. Lombardi and is Brotherhood's Exhibit No. 2.

Subsequent correspondence relative to the handling of the claim and appeals is Brotherhood's Exhibit Nos. 3 through 10. A proposal to file a joint submission was rejected by Carrier on April 3.

As is indicated by this correspondence, the dispute has been handled by the Brotherhood in the usual and proper manner on the property, up to and including the highest officer of Carrier designated to handle such disputes, without receiving a satisfactory settlement.

There is an agreement in effect between the parties to this dispute bearing an effective date of April 1, 1952, as amended, which is by reference thereto made a part of the record in this dispute.

(Exhibits not reproduced.)

**CARRIER'S STATEMENT OF FACTS:** At approximately 6:00 P.M. Saturday, October 22, 1966 there was a train derailment in the vicinity of CP-22, Framingham, Mass. As a result, employees coming under the scope of the Signalmen's Agreement were called and used on their rest days to work varying tours of duty commencing Midnight Saturday, October 22, 1966 until 10:30 P.M. Sunday, October 23, 1966, to make necessary repairs to the signal system that was damaged.

Signalman Tarte completed his work week on Friday, October 21, 1966. Saturday and Sunday, October 22-23, 1966, were his assigned rest days. Seven-day pay periods in effect on this property run from Saturday through Friday. Mr. Tarte was shown on vacation pay period Saturday, October 22 through Friday, October 28, 1966.

Signalman Tarte was not used on Saturday or Sunday, October 22-23, 1966, because he was starting his one-week vacation period upon completion of his work week on Friday, October 21, 1966.

Signalman Tarte submitted claim for 22 hours 30 minutes at overtime rate, contending he should have been called and used instead of junior employees. No employee worked a total of 22 hours 30 minutes. Carrier denied the claim.

**OPINION OF BOARD:** On Saturday, October 22, 1966, a derailment in the vicinity of Framingham, Mass., caused damage to the signal system and a number of signal employees were called to make the necessary repairs, the repair work was completed some time in the evening of Sunday, October 23, 1966.

Claimant was not called and now claims time, at overtime rate, worked by employees his junior in seniority. Carrier denied the claim alleging that Claimant was on vacation and was not eligible to be called for work.

The Board does not agree with Carrier's contention that Claimant was on vacation on October 22. The record discloses that the Signal Supervisor authorized Claimant to take five days of his vacation beginning Monday, October 24, 1966. The days in dispute were Claimant's rest days immediately preceding the day he was authorized to begin his vacation and cannot be considered as vacation days under the Vacation Agreement. Only work days are chargeable as vacation days.

Therefore, Claimant was not on vacation on October 22 and 23, 1966 and was eligible to be called. Accordingly the claim will be sustained.

Carrier in its ex parte submission questions the amount of time claimed, but did not refute same, in any manner, during the handling on the property.

**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.

#### A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of May 1969.