



Award No. 17664

Docket Number SG-18174

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Gladden, 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 Rule 25, when on November 26, 1967 it used other than the regular assigned Maintainer to load cable at Ashland, Kentucky for use in signal work account of derailment of train No. 295 near Mile Post 110 on Big Sandy Subdivision. This violation occurred at approximately 8:30 PM on the date shown herein.

(b) Carrier now be required to compensate Leading Signal Maintainer W. E. Tilson in the amount of a minimum call (four (4) hours) at his applicable rate of pay for the violation cited in part (a) of this claim.

(Carrier's File: 1-SG-260)

EMPLOYEES' STATEMENT OF FACTS: This dispute arises from Carrier's failure and/or refusal to assign overtime according to seniority. At 8:30 P.M. on November 26, 1967, an employee junior to Leading Signal Maintainer W. E. Tilson was called and used to work in connection with loading of cable at Ashland, Kentucky, for emergency use at derailment of train No. 295 near Mile Post 110 on Big Sandy Subdivision.

Leading Signal Maintainer W. E. Tilson, regular assignee to the maintenance territory on which the violation occurred, was available and would have responded for such work had he been called.

Carrier and the Employees are in complete agreement that seniority prevails and governs in the assignment of overtime among the group of maintainers on the Ashland territory. For more than twenty-five (25) years in such instances Carrier has used the senior employee when he was available.

In the instant situation, however, Carrier disregarded seniority on the assumption that Leading Signal Maintainer Tilson was unavailable due to his living 35 miles from the location at which the emergency cable was stored.

As a result, Local Chairman C. D. Butcher entered claim with Division Engineer T. W. Long on November 30, 1967, asking that Leading

Signal Maintainer Tilson be paid the amount of a minimum call (four (4) hours) at his applicable rate of pay, the amount he would have earned had the principle of calling the senior employe for overtime service been followed.

The initial claim is Brotherhood's Exhibit No. 1; correspondence relative to the handling of it and subsequent appeals is Brotherhood's Exhibit Nos. 2 through 5.

The claim has been handled to a conclusion on the property in the usual and proper manner by the Brotherhood, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement.

CARRIER'S STATEMENT OF FACTS: There is on file with your Board a copy of the agreement between this Carrier and the petitioning organization identified as Schedule No. 6, reprinted May 16, 1958. That agreement is controlling where it may be applicable and it is made a part hereof by reference.

At approximately 7:05 p.m. on November 26, 1967, a derailment occurred in the vicinity of Mile Post 110 on Carrier's Big Sandy Subdivision. The derailment damaged a part of the signal cable which houses the coding circuitry, and as a result thereof all signals and switches east of "FO" Cabin were rendered inoperative. Needless to say, the operations on that subdivision were seriously impaired pending the repair of the signalling system. Equally apparent is the fact that the situation demanded prompt action.

In order to restore operations as quickly as possible, a "jumper" cable was dispatched from Ashland, Kentucky, to be used in place of the damaged cable pending permanent repair thereof. Ashland is located approximately 116 miles from the site of the accident and is the headquarters of a signal maintenance group to which the claimant is assigned.

The assistant supervisor at Ashland was instructed to transport the jumper cable to the scene of the derailment as quickly as possible. To assist him in loading the cable, the senior signal maintainer assigned to the Ashland maintenance group, who resides in Ashland, was called but did not respond. To avoid any further delay, a traveling mechanic (a signal employe covered by the Signalmen's Agreement), who also resides in Ashland, was called and used to assist in loading the cable. The cable was transported to the site of the accident and was connected. The signals and switches were restored to an operative condition at 12:44 a.m., November 27, 1967.

The claimant, a leading signal maintainer assigned to the Ashland maintenance group, contends he should have been called to assist in loading the cable. He resides at Louisa, Kentucky, which is located approximately 30 miles from Ashland. To have called him would have resulted in at least an hour's delay, a delay which could not be countenanced in view of the emergency confronting the Carrier.

The petitioner cites Rule 25, the call rule, in support of the instant claim.

OPINION OF BOARD: This claim arises out of an alleged violation of Rule 25 of the controlling agreement which reads as follows:

"RULE 25 — WORK OUTSIDE OF ASSIGNED HOURS

(Effective September 1, 1949)

Employees assigned to or filling vacancies on maintainer position 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 employee 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..."

There is no dispute that claimant was the senior signal maintainer after an unsuccessful effort to reach the senior signal maintainer assigned to the Ashland group. The Carrier, however, did not call claimant and contends that an emergency existed and due to claimant's residence being 35 miles from the place where the work was to be performed he was not "available" under the terms of Rule 25 as applied to the given situation.

This Board has held that:

"Although the Agreement does not expressly provide for deviations from the applicable Rules when emergencies are present, . . . that under unavoidable exigencies requiring the speedy preference of an employe as an alternative to prolonged impairment of operations, that employe, even though enjoying priority of assignment under the Agreement, who clearly cannot get to the assignment in the needed time, may be regarded as not being truly 'available' in realistic terms. . ." Award 12938 (Yagoda)

In the absence of express language in Rule 25 authorizing the Carrier to follow the procedure in the instant case, the Carrier must show that an emergency existed and that the delay occasioned by the distance to be traveled by the maintainer would have resulted in prolonged impairment of operations or would have enhanced the emergency situation.

We find no evidence in the record that the additional time necessary for claimant to travel the 35 miles from his home to the place where the work was performed would have resulted in prolonged impairment of operations, or do we find evidence that the additional delay in making the repairs which would have resulted from calling claimant would have enhanced the emergency situation.

"There can be no hard and fast rule in determining when a man is 'available' under the application of Rule 25. . ."

"Each case must be determined on the basis of the facts and circumstances involved in that case. . ." Award 17080 (Myers)

The claim therefore shall be sustained.

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 20th day of January 1970.

CARRIER MEMBERS' DISSENT TO AWARD NO. 17664, DOCKET NO. SG-18174

(Referee Don Gladden)

Award 17664 is in palpable error, is not supported by the record or prior precedent awards of the Division, and we dissent.

The Referee's holding that:

"* * * the Carrier must show that an emergency existed and that the delay occasioned by the distance to be traveled by the maintainer would have resulted in prolonged impairment of operations or would have enhanced the emergency situation."

shows a complete disregard for the record of the handling of the dispute on the property, and also blames the Carrier for not proving something that was never in dispute. In the handling on the property the Carrier advised the General Chairman:

"On November 26, 1967, an emergency came about. Train No. 295 derailed near Mile Post 110 on Big Sandy Subdivision. This derailment caused the code control of switches and signals east of 'FO' Cabin to become inoperative. It was necessary to use emergency cable to get around the derailment site.

"Necessary emergency cable is kept at Ashland, Kentucky, about 116 miles from the accident. Signal Maintainer Butcher, who lives at Ashland, was called for loading the necessary emergency cable; but, he could not be contacted. The next senior Maintainer was W. E. Tilson, but Tilson does not reside at Ashland. He lives at Louisa, Kentucky, and a delay of more than an hour would have resulted if Tilson had to come from Louisa to Ashland to do the loading of the cable. Traveling Mechanic Newberry was called on to assist in loading the cable and meeting this emergency."

The above-quoted statement of the Carrier was never disputed by the General Chairman. In its submission to this Board the Petitioner stated:

"* * * At 8:30 P.M. on November 26, 1967, an employe junior to Leading Signal Maintainer W. E. Tilson was called and used to work in connection with loading of cable at Ashland, Kentucky, for emergency use at derailment of train No. 295 near Mile Post 110 on Big Sandy Subdivision."

Thus, there was no dispute as to an emergency situation existing. There likewise was no dispute that Claimant lived some 35 miles from the location where the work was to be performed. In numerous awards of this Division, nineteen of which were cited to the Referee and apparently ignored, we have adhered to the proposition that a Carrier "may take whatever action is appropriate to cope with an emergency situation." (Award 13316.) An emergency situation is simply that without being "enchanced."

/s/ P. C. CARTER
P. C. Carter

/s/ G. C. WHITE
G. C. White

/s/ R. E. BLACK
R. E. Black

/s/ W. B. JONES
W. B. Jones

/s/ G. L. NAYLOR
G. L. Naylor