

Award No. 18138
Docket No. SG-18358

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company (Pacific Line) that:

(a) The Southern Pacific Company violated the Agreement between the company and the Brotherhood of Railroad Signalmen effective April 1, 1947 (reprinted April 1, 1958, including revisions) and particularly Rule 16 which resulted in violation of Rule 70.

(b) Mr. E. H. Ramey be allowed three hours and forty minutes at the overtime rate of pay, account employee not subject to call used for emergency overtime work and Mr. Ramey was not called.

[Carrier's File: SIG 152-238]

EMPLOYEES' STATEMENT OF FACTS: Claimant E. H. Ramey was a regularly assigned Signal Maintainer, with headquarters at Modesto, California. His assigned work days were Monday through Friday with rest days Saturday and Sunday.

Monday, April 22, 1968, at 3:50 A. M., the crossing flashers at Olive St., Turlock, California, which is on the assigned territory of Signal Maintainer E. V. Allison, was damaged by something falling off a passing train.

Three men were needed to repair the damage to the crossing flashers. The Carrier called E. V. Allison, the maintainer on whose territory the trouble occurred, R. D. Shaw, the signal maintainer at Madera, California, whose territory was adjacent to Mr. Allison's territory on the east end, and Signalman C. R. Vance, who was not a maintenance employee, to perform the overtime work.

The territory of Claimant Ramey was adjacent to Mr. Allison's territory on the West end, he was available for service and would have responded had he been called.

Inasmuch as Claimant Ramey was an employee assigned to regular maintenance duties, claim was entered on his behalf, based on the provisions of Rule Nos. 16 and 70, which are quoted herein for ready reference.

Merced to call two additional signal employees to pick up, deliver and assist Allison in installing the temporary flashing light signals. These employees were Signal Maintainer R. D. Shaw, the regular maintainer on the district adjacent to Allison to the east, with headquarters at Madera, and Signalman C. R. Vance, assigned to Megger Gang 5-A, with headquarters at Merced. Both these employees resided in the vicinity of Merced. Both Shaw and Vance reported on duty at 3:50 A. M., April 22, 1968, and worked through to 7:30 A. M., that date, assisting Signal Maintainer Allison.

3. By letter dated April 25, 1968 (Carrier's Exhibit A), Petitioner's Local Chairman submitted claim to Carrier's Division Superintendent in behalf of Signal Maintainer E. H. Ramey (hereinafter referred to as the claimant), the regular assigned maintainer on the district adjacent to Allison to the west, with headquarters at Modesto, for 3 hours and 40 minutes at the overtime rate of pay, April 22, 1968, account not called to assist Signal Maintainer Allison on Allison's district in repairing the damaged crossing signal at Turlock. By letter dated May 3, 1968 (Carrier's Exhibit B), Carrier's Division Superintendent denied the claim. By letter dated May 10, 1968 (Carrier's Exhibit C), Petitioner's Local Chairman gave notice that the claim would be appealed.

By letter dated June 12, 1968 (Carrier's Exhibit D), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel; and by letter dated July 24, 1968 (Carrier's Exhibit E), the latter denied the claim.

By letter dated July 30, 1968 (Carrier's Exhibit F), Petitioner's General Chairman advised that denial of the claim was not acceptable on the basis that claimant was entitled to be called in place of Signalman Vance under provisions of Rule 16 of the current agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: An emergency arose due to damage to the crossing flashing lights on April 22, 1968 at the Olive Street Crossing, Turlock, California when said lights were hit by an object from a passing train. Carrier used the signal maintainer on whose territory the signal was located as well as Signal Maintainer R. D. Shaw, whose territory was adjacent to the territory where the crossing lights were located, and Signalman C. R. Vance, a non-maintenance employee.

The Organization contends that Carrier should have called Claimant, whose territory was adjacent to the territory where the flashing lights were located inasmuch as Claimant was regularly assigned to maintenance duties and Claimant was not registered absent and was available for service and would have worked if called.

The Organization relies on Rule 16 and 70, asserting that Carrier disregarded the requirements of Rule 16 when it called Signalman (not maintainer) C. R. Vance, an employee not assigned to maintenance duties, to perform the work in question. The Organization's posture is that, under the proper application of Rule 16, employees assigned to regular maintenance duties, will be called for emergency calls in preference to employees not appointed to said maintenance assignments.

"RULE 16.
SUBJECT TO CALL.

Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and shall notify the person designated by the Management where they may be called and shall respond promptly when called. When such employees desire to leave their headquarters for a period of time in excess of three (3) hours, they shall notify the person designated by the Management that they will be away, about when they shall return, and when possible, where they may be found. Unless registered absent, regular assigned employees shall be called."

The Carrier's stance in regard to this claim is that Rule 16 requires Carrier to call signal maintainers (unless registered absent) for that work for which they are the regularly assigned employees, i.e., the maintenance work which is assigned to them within their regular assigned, specifically limited maintenance territories; and since the work in question did not occur in Claimant's maintenance territory, and thus not maintenance work regularly assigned to him, Carrier was not therefore required to call him for said emergency work on the date in question; that Carrier complied with said Rule 16 when it called Signal Maintainer Allison, the regularly assigned signal maintainer, to the territory where the signal trouble was located.

This Board was faced with a similar dispute as is involved herein, covering the same parties, in Award No. 17248, and in said Award the Board explained:

"Carrier claims that under the language of Rule 16 it was not obligated to use Claimant Hartless and could use an employee not so regularly assigned.

While there are similar rules with other carriers which by their specific language might allow this procedure, it is not the situation here.

Rule 16 of the Agreement under which this case comes to us says:

'... Unless registered absent, regularly assigned employees shall be called.'

In drafting this rule, the parties might have chosen to limit the Carrier's obligation to a single assignee, as was done in the Agreement between the Brotherhood and the Chicago, Rock Island and Pacific Railroad in its Rule 19, which reads:

'... Unless registered absent, the regular assignee will be called.'

We cannot rewrite the agreement, and must find that Carrier was in violation of Rule 16 when it used an employee assigned other than to signal maintenance work when Claimant was holding himself available for work as provided by the rule."

In the re-argument held before this Board, Carrier's member of this Board vigorously argued that Award No. 17248 can be distinguished from the instant

case; however, we disagree. Said Award 17248 involved the same parties, the same rule, and the Claimant therein, as in our instant dispute, was not an assigned employe from the district where the work was done.

Finding said Award No. 17248 not palpably erroneous and controlling in this instance, we will sustain the claim.

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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1970.

CARRIER MEMBERS' DISSENT TO AWARD 18138 **(Referee Dugan)**

In this award the Referee and Labor Members compounded the error made in Award 17248 by adopting certain dicta in that award and applying it to facts that are clearly distinguishable. See Dissent of Carrier Members to Award 17248.

In the next to last paragraph of the award it is asserted that the facts in this case cannot be distinguished from those in Award 17248 because "Award No. 17248 involved the same parties, the same rule, and the Claimant therein, as in our instant dispute, was not an assigned employe from the district where the work was done." While the three facts here noted are the same in both cases, these facts are not all of the essential facts which served as an indispensable basis for the claim in Award 17248. The most essential fact in that claim, the fact on which the claim was expressly based, was that the signal maintainer assigned to the particular district was not called in an emergency, and the question presented concerned who was entitled to be called when the maintainer assigned to the particular district was not called. In the instant case, the maintainer assigned to the

particular district was called. That maintainer found that he was unable to handle the entire job, and that additional help was necessary.

The ultimate question here is whether the Carrier is restricted by the agreement from assigning this work to a member of a signal gang on that same district instead of to a maintainer on an adjoining district. Since no rule of the agreement establishes that the particular work belongs to maintainers, the decision here should have been the same as that reached by this Board in Awards 12403 (Wolf) and 16698 (Devine), namely:

"Neither the agreement nor other evidence of record distinguish between work which may be assigned to maintainers and construction forces. Being thus without a guide, the Board finds that the claim must be denied."

G. L. Naylor
R. E. Black
P. C. Carter
W. B. Jones
G. C. White