

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Paul C. Dugan, 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:

On behalf of Mr. J. B. Cahal, a Signalman assigned to Gang No. 26 on the EK Subdivision, for three (3) minimum calls of two (2) hours and forty (40) minutes each — a total of eight (8) hours — at the overtime rate, because he was not called for signal trouble once on November 4, 1967, and twice on December 10, 1967. In each of the three instances Signalmen who were also assigned to Gang No. 26 but had less seniority than Mr. Cahal were called and used in violation of Rule 17(d). (Carrier's File: G-357-2)

EMPLOYEES' STATEMENT OF FACTS: Claimant in this dispute is Mr. J. B. Cahal, senior signalman assigned to Gang No. 26, on the Carrier's EK Subdivision with camp car headquarters. Mr. J. B. Aines and G. Walters are the two junior signalmen assigned to Gang No. 26, and all are assigned to a Monday through Friday workweek.

On November 4, 1967 signal trouble developed at Lexington, Kentucky and Mr. Aines who is junior to Claimant was called by the Carrier to repair the trouble.

On December 10, 1967, two cases of signal trouble developed near Paynes, Kentucky and Mr. Walters who is also junior to Mr. Cahal was called by the Carrier to repair the trouble.

Inasmuch as Rule 17(d) of the current agreement states that:

"When overtime service is required of a part of a group of employes who customarily work together, the senior available employes of the class involved shall have a preference to such overtime if they so desire."

— and Mr. Cahal was available on the dates involved, a claim was entered in his behalf for three (3) minimum calls.

The claim was handled in the usual and proper manner, up to and including the highest officer of the Carrier designated to handle such disputes without obtaining a satisfactory settlement. Pertinent correspondence has been reproduced and attached hereto, identified as Brotherhood's Exhibit Nos. 1 through 8.

There is an agreement in effect between the parties, bearing an effective date of February 16, 1949, revised to include supplements and revisions to February 1, 1967, as amended, which is by reference made a part of the record in this dispute.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Mr. J. B. Cahal and two junior employes, Messrs. J. B. Aines and G. Walters, were assigned as signalmen to the division signal gang with assigned territory being the Eastern Kentucky Division. These employes were living in camp cars, which at that time were located at Lexington, Kentucky.

On Saturday, November 4, all men had returned to their respective homes for the week-end. Mr. Aines resides at Lexington, Kentucky, and Mr. Walters resides at Midway, Kentucky, approximately 11 miles from Lexington. Mr. Cahal resides at Ravenna, Kentucky, approximately 50 miles from Lexington.

At 4:30 A. M., on Saturday, November 4, 1967, there was signal trouble at Lexington. The regular signal maintainer was not available and Mr. Aines was called on this trouble as it was nearest his home and he was the most available employe. This was not work which is normally performed by signalmen assigned to camp cars.

At 2:30 A. M. and 5:30 P. M., on Saturday, December 10, 1967, there were two cases of signal trouble near Paynes, Kentucky, approximately 5 miles from Mr. Walters' home. The regular signal maintainer was not available and, therefore, Mr. Walters was called on this trouble as it was nearest his home and he was the most available employe. This was not work which is normally performed by signalmen assigned to camp cars.

Employes alleged that Rule 17(d) of the agreement was violated and filed claim. Pertinent correspondence exchanged in connection with the claim is attached and identified by Carrier Exhibits "AA" through "HH".

There is on file with the Third Division a copy of the current working rules agreement and it, by reference, is made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner bases his claim for not being called for signal repair work on the various dates in question on Carrier allegedly violating the provisions of Rule 17(d) of the Agreement, which provides as follows:

"RULE 17.

OVERTIME AND CALLS

(d) When overtime service is required of a part of a group of employes who customarily work together, the senior available em-

ployes of the class involved shall have a preference to such overtime if they so desire."

Petitioner was assigned to Division Signal Gang No. 26, headquarters, camp cars, with members of the gang spending weekends at their homes. Petitioner resided at Ravenna, Kentucky and employes J. B. Aines and G. Walters, junior in seniority to claimant, and used by Carrier on the dates in question, resided at Lexington and Midway, Kentucky, respectively. On Saturday, November 4, 1967, trouble arose concerning Signal No. 934, Lexington, Kentucky, and Signalmen Aines, who was assigned to Division Signal Gang No. 26 and who resided approximately 11 miles away, was called to correct the Signal trouble since the regular Signal Maintainer was not available. Again, on Saturday, December 10, 1967, two incidents of Signal trouble occurred near Paynes, Kentucky and due to the regular Signal Maintainer being unavailable, Carrier called Signalmen Walters, who resided approximately 5 miles from the location of the signal plight, to alleviate the Signal difficulty.

Claimant resided approximately 50 miles from the sites of the Signal disorders, and Carrier contends that he was therefore not available for call as required by the provisions of said Rule 17(d).

The Organization, in its ex parte submission to this Board, contended that inasmuch as the employe used on November 4th was called to repair the Signal failure at 4:30 A. M. and the next train scheduled to use the section of track was not due until 8:24 A. M., then Claimant was as much available as said employe on said date; that this was also true on December 10th, when the employe was first called at 2:30 A. M. and the next scheduled train to use the track section was due at 5:36 A. M., and concerning the second Signal trouble on said date, the employe used was called at 5:30 P. M. with the next train to use the track due at 9:07 P. M. This Board has repeatedly and consistently held that charges or contentions not raised on the property cannot be considered by the Board in adjudicating the conflict. Therefore, the train schedule argument, not being raised on the property, cannot now be considered by the Board herein. This is also true in regard to Carrier's defense of an "emergency", which Carrier failed to raise on the property, and thus cannot be accepted in regard to the ruling rendered in this case.

Therefore, in deciding this dispute, we have to determine whether or not Claimant was "available" for service within the intent and meaning of said Rule 17(d).

In considering the meaning of the word "available" as used in an Award analogous to our dispute, Award No. 17080, the Board concluded that: "Each case must be determined on the basis of the facts and circumstances involved in that case. . . ."

Previous Awards of this Board involving like disputes are helpful to us in deciding this claim. This is particularly true in view of Award No. 12519, involving the same parties to this dispute, when the Board in said Award concluded:

" . . . The Claimant was at Mount Vernon, Illinois, a distance of 47 miles from the point where the investigation was commenced.

In view of the exigency of the situation, we hold that Claimant was not 'available' since he was 47 miles away and that Stansberry was the 'senior available employe' within the meaning of Rule 17(d). For this reason the claim must be denied."

See also Award No. 12520, also comprising the same parties as herein, where the Board determined that a Claimant, who lived 33 miles from the site of the work to be performed, was not the "senior available employe" within the meaning of Rule 17(d). Likewise, Awards No. 15339 and 15998, between the same parties to this dispute, where the Board found Claimants not available due to being 65 miles and 135 and 250 miles from the work site.

Inasmuch as Claimant herein was approximately 50 miles from the work site on the dates in question, we find that he was not the "senior available employe" within the intent and meaning of Rule 17(d), and therefore we must deny 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 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 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 30th day of October 1970.