

Award No. 18268

Docket No. SG-18473

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ERIE LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie Lackawanna Railroad Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, when from 3:30 P. M. to 7:00 P. M., each day January 19, 22, 23, 24, 25, and 26, 1968, an employe having a territory with headquarters at South Orange, New Jersey, was assigned and used on the Summit, New Jersey, territory, instead of the regularly assigned employe Signal Maintainer R. N. Rieder, who was available to cover the assignment.

(b) Carrier be required now to compensate Signal Maintainer R. N. Rieder for twenty-one (21) hours at the time and one-half rate of his being denied the right to work the above-mentioned hours on his assigned territory.

(Carrier's File: 164-SIG.)

EMPLOYEES' STATEMENT OF FACTS: There is an agreement in effect between the parties to this dispute, bearing an effective date of March 1, 1953, as amended, which is by reference made a part of the record in this dispute; Rule 14 (h) thereof provides that:

"(h) Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available furloughed unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

On November 20, 1967, the carrier established a system of stand-by service by certain of its employes to afford protection against delays to its commuter runs as evidenced by Brotherhood's Exhibit No. 1. Two signal maintenance sections (territories), one headquartered at Paterson and the other at Summit, New Jersey, (see items 3 and 4) were involved in plan. The duty required was assigned to the Leading Signal Maintainers of each section, who were the senior employes on each of those sections.

of Maintainers before leaving for the trouble location. The Foreman would then if necessary call the maintainer assigned to the territory where the difficulty existed to assist the standby Leading Maintainer in restoring the system to operation. There is no evidence that any actual work was performed during the period of claim.

On dates of claim, Leading Signal Maintainer Mills could not perform this standby service, thus carrier assigned the overtime work to Mr. H. R. Dailey, the next senior regularly assigned Leading Signal Maintainer in the signal sections involved. The instant claim was filed on February 1, 1968 alleging Signal Maintainer R. N. Rieder, hereinafter referred to as claimant, should have been used to fulfill the standby duties of Leading Signal Maintainer Mills, citing Rule 14(h) to support its claim. Claim was denied on March 19, 1968 and thereafter timely handled up to and including Carrier's highest appellate officer, where it was discussed in conference on March 25, 1969 and denial decision rendered April 2, 1969.

OPINION OF BOARD: Claimant contended on the property that Carrier violated Section 14(h) of the Agreement when it failed and/or refused to assign extra duties to Claimant, who was available and headquartered at Summit, N.J., where the work was performed. Carrier assigned the extra duties to Leading Signal Maintainer, H. Dailey, headquartered South Orange, N.J. in the absence of Leading Signal Maintainer Mills, headquartered Summit, N.J.

Carrier, defending this claim on the property, asserted that as the assignment was not part of any regular assignment and that the employee used by Carrier was senior to Claimant, no rule of the Agreement was violated.

The Organization, on the property, responded by stating that if seniority was the reason for denying the claim, a number of employees, senior to the employee used, should have been considered for the work; that Carrier has been assigning employees to fill these positions by headquarters location and not by seniority; that Rule 14(h) reserves the work here in question to the regular employees assigned at Summit, N.J.; that the disputed work was the regular work of a regular employee assigned to the Summit section; that inasmuch as the work in question belonged to the incumbent on the Summit section, only an employ assigned to that section is a "regular" employee to said work.

Rule 14 (h) provides as follows:

"(h) Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available furloughed unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

Carrier's position herein is that the petitioner has failed to prove that he was in fact the regular employee for the type of work performed; that Carrier has the right to assign the senior regularly assigned employee to perform overtime work on a standby basis covering three signal sections within the seniority district; that inasmuch as the standby operation functioned from Summit, it does not mean that the work flows to any other Signal De-

partment employe at said location; that in the absence of the senior regular assigned Leading Signal Maintainer, Carrier properly assigned the work to the next senior regularly assigned Leading Signal Maintainer in the involved territory; that no rule in the Agreement designates who is to perform said overtime work, when, as here, it is a part of several signal sections.

To prevail Claimant has the burden of proving that he was the "regular employe" as referred to in Rule 14 (h) relied upon by the Organization in this instance and as such is entitled to the overtime work here in question. The fact that Claimant was stationed at Summit, N.J. where the work in dispute was performed does not necessarily mean that he therefore is entitled to the work in question, and no rule of the Agreement was cited by Claimant supporting a conclusion that because Claimant was headquartered at the site of the overtime work, he was thus entitled to such work. Inasmuch as Claimant failed to meet his burden of establishing that he was the "regular employe" within the intent and meaning of said Rule 14 (h), we are compelled to 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 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 13th day of November 1970.

CARRIER MEMBERS' CONCURRING OPINION **AWARD 18268, DOCKET SG-18473**

Award 18268 correctly finds that there was no violation of the Agreement and correctly denies the claim. But it is grossly in error in the manner in which it reaches such conclusion.

The overtime that was in question was overtime occurring on assigned work days. Unassigned days were not involved and consequently Rule 14 (h) had no application whatever to the dispute. The mere fact that it was injected into the dispute by the Organization and responded to by the Carrier

does not make such Rule dispositive of the dispute. The function of this Board is to interpret Agreements between the parties and when it is clear that a rule has no application to the dispute this Board should so find. In this dispute the attention of the Referee was directed to prior awards of this Board, by eminently qualified Referees, to the effect that the Unassigned Day Rule has no application on days that are part of an assignment. However, instead of being guided by those correctly reasoned awards the Referee blithely ignores them and reaches a conclusion that the Claimant did not prove he was the "regular employe" within the intent and meaning of Rule 14 (h).

The Referee's attention was also directed to the fact that an analogous situation with respect to the assignment of overtime work was recently decided by this Board in its Award 17555 involving these same parties. In Award 17555 it was correctly found that since there was no Rule to cover the assignment of overtime the Claimant did not have a contractual or demand right to the work. Such prior Award, not being in palpable error, should have been followed, and the claim in Award 18268 should have been denied for the same reason as was the claim in Award 17555.

The Referee has again pursued his unique way of disposing of a case, ignoring precedent that should be followed and also ignoring the basic rule of contract construction that if the rule relied upon has no application then the claim should be denied on such basis.

G. C. White

R. E. Black

P. C. Carter

W. B. Jones

G. L. Naylor