

Award No. 18580

Docket No. SG-18735

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**SOUTHERN PACIFIC TRANSPORTATION COMPANY
(Pacific Lines)**

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

(a) The Southern Pacific Company (Pacific Lines) violated the Agreement between the Company and the employees of the Signal Department represented by the Brotherhood of Railroad Signalmen, effective April 1, 1947 (reprinted April 1, 1958, including revisions), and particularly Rules 2(a) and 33, which resulted in violation of Rule 70.

(b) Mr. R. P. Smick be compensated for calls of two hours and forty minutes at his overtime rate for the following dates: February 9, two calls; February 22, one call.

(Carrier's File: SIG-22-29)

Employees' Statement of Facts: There is an Agreement between the parties to this dispute bearing an effective date of April 1, 1947 (Reprinted April 1, 1958 including revisions) which is by reference made a part of the record in this dispute. Of particular pertinence here are Agreement Rules 2(a) and 70:

"Rule 2(a). **SIGNAL FOREMAN.** An employe who is assigned to the duties of supervising the work of other employes, and who is not required to regularly perform the work over which he has supervision.

Rule 70. **LOSS OF EARNINGS:** An employe covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement shall be reimbursed for such loss."

On certain dates set out in the record of this dispute the carrier called out the members of its Signal Gang No. 25 except for the claimant, its Foreman. The Carrier's Rules and Regulations for the Maintenance of Way and Structures contains a Rule numbered M 621 which provides that:

"Signal Foremen are in charge of such forces as may be assigned to them, and must see that such employes properly perform their duties.

They must keep records and make prescribed reports of the time of their men, and of the receipt, distribution and use of materials."

Inasmuch as the carrier's failure to call the claimant was in violation of the controlling agreement, a claim on his behalf was initiated. As evidenced by our Exhibits Nos. 1 through 5, this dispute was handled in the usual and proper manner on the property, up to and including the highest officer of the carrier designated to handle such disputes, without receiving a satisfactory settlement.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS:

1. There is in evidence an agreement (hereinafter called the current agreement) between the Carrier and its employees represented by the Petitioner, having effective date of April 1, 1947 (reprinted April 1, 1958, including revisions), a copy of which is on file with the Board and is hereby made a part of this submission.

2. During the period involved in this claim, storm conditions had caused the rocky, mountainous terrain north of Dunsmuir, California, through which Carrier's main line track passes, to become saturated and unstable. This condition made it necessary to perform certain emergency repair work on Carrier's slide detector fences in that area; also, such conditions required certain repair work on switch heaters maintained by signal employees at Dunsmuir. The specific work here involved was performed outside regular assigned hours, on an overtime basis, by calling employees assigned to Signal Gang No. 25 with headquarters at Dunsmuir. Signal Gang No. 25 consisted of Signal Foreman R. P. Smick (hereinafter referred to as the claimant), one Leading Signalman, three Signalmen and one Assistant Signalman.

Carrier's Semi-Monthly Time Roll covering record of time worked and claimed by members of Signal Gang No. 25 indicated the following overtime which had been claimed and allowed at the applicable rate of pay for the specific work which caused this claim to arise:

February 9, 1969 (a Sunday):

The Leading Signalman and one Signalman in this gang worked three hours overtime from 4:30 A.M. to 7:30 A.M. account slide detector indication at Cantara. These same employees of this gang were called again later on this date and worked three hours overtime from 4:00 P.M. to 7:00 P.M. account slide detector indication at Cantara.

February 22, 1969 (a Saturday):

The Leading Signalman of this gang worked four hours overtime from 11:30 P.M. to 3:30 A.M. account switch heaters not working at Dunsmuir.

3. By letter dated March 3, 1969 (Carrier's Exhibit "A"), Petitioner's Local Chairman submitted claim in behalf of claimant to Carrier's Division Superintendent, for two calls of 2 hours 40 minutes for February 9, 1969 and for one call on February 22, 1969, based on the contention other employees called members of Signal Gang No. 25 for the overtime work here in question.

By letter dated March 7, 1969 (Carrier's Exhibit "B"), Carrier's Division Superintendent denied the claim. By letter dated March 10, 1969 (Carrier's Exhibit "C"), Petitioner's Local Chairman gave notice that the claim would be appealed.

By letter dated March 18, 1969 (Carrier's Exhibit "D"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel and by letter dated April 30, 1969 (Carrier's Exhibit "E"), the latter denied the claim.

By letter dated May 1, 1969 (Carrier's Exhibit "F"), Petitioner's General Chairman advised that Carrier's reasons for denying the claim were not accepted.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant seeks compensation for calls of two hours and forty minutes at his overtime rate for February 9, two calls, and February 22, one call. On the above dates, Carrier called out members of Signal Gang No. 25, except for Claimant, the gang foreman, which members worked overtime. As foreman, Claimant was required to post the time and keep the necessary records of the men who were called for overtime although he didn't actually work with them. Since the foreman was assigned these duties the Organization contends he should have been called to work with the members of his gang and that he should be compensated the overtime as a result of not being called. They rely on Rule 2(a), the Scope Rule, Rule 33, and Rule M621 of Carrier's Rules and Regulations for the Maintenance of Way and Structures, to support their contention.

It is well established by prior awards of this Board that unless specifically provided in the Agreement, Carrier has the sole and exclusive right to determine when and under what circumstances a foreman is assigned to supervise a group of employees. The current Agreement applicable here is wanting in said contractual provision. Nowhere does the Agreement require the service of a foreman in all circumstances. Nor can the Scope Rule be relied on to give Claimant the right to personal supervision of his gang in all circumstances. In this instance, Carrier exercised its prerogative in determining the amount of supervision required. The claim is therefore denied.

FINDINGS: The Third Division of the Adjustment Board, up 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1971.

Dissent to Award 18580, Docket SG-18735

The Majority's Award is in error, first because it is in conflict with Award No. 15 of PL Board No. 15. It also errs in its comments concerning the Scope Rule of the confronting Agreement; that rule was neither cited as having been violated nor otherwise discussed by the Petitioner. Such gratuitous comments are dicta and cannot be given weight.

Award 18580 is in error, and I dissent.

W. W. Altus, Jr.
Labor Member