

Award No. 18595

Docket No. SG-19055

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Edgett, 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:

For three (3) hours and 28 minutes at overtime rate in favor of P. E. Shake for not being called per Rule 18(a).

[Carrier's File: G-357-2; G-357]

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

Claimant P. E. Shake is a Signal Maintainer subject to call under Rule 18(a), which reads:

"RULE 18. SUBJECT TO CALL.

(a) Employees assigned to or filling maintenance positions will notify the management where they may ordinarily be called. If on specific occasions they desire to be off call, they will so advise the person designated for the purpose. Unless registered off call, they will be considered available and will be called for service to be performed on their assigned territory and will respond as promptly as possible when called."

On September 10, 1968, at 3:32 A.M., highway crossing protection signals at Buck Creek crossing, on Claimant's territory, were reported out of order by the crew of Train #742. Even though Signal Maintainer Shake was holding himself subject to call under Rule 18(a), Carrier did not call him; it did not notify him to correct this signal trouble until he reported for regular tour of duty at 7:00 A. M.

Under date of September 26, 1968, the Brotherhood's Local Chairman filed a claim on behalf of Mr. Shake for 3 hours and 28 minutes overtime

pay on the basis he should have been called at the time the signal trouble was reported, and that Carrier's failure and/or refusal to do so constituted a violation of Rule 18(a). The claim was subsequently handled to a conclusion on the property, up to and including conference discussion with the highest officer of the Carrier designated to handle such disputes, without receiving satisfactory settlement. Pertinent exchange of correspondence on the property is attached hereto as Brotherhood's Exhibit Nos. 1 through 8, with No. 1 being the Local Chairman's initial claim cited above.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The rail at the Buck Creek Crossing on the MH&E Branch of the Evansville Division had run and pulled the track wire tight between the rail and the tie plate. The trains that passed over the joint then mashed the wire and eventually the wire was cut in two and caused the crossing signal to be inoperative.

The signal was reported inoperative at 3:32 A. M. on September 10, 1968, by the Crew of the last train which would be going over this crossing until 9:15 A. M. that date. The claimant in this dispute came on duty at 7:00 A. M. this date and corrected the trouble before 9:15 A. M., the scheduled time of the next train over the crossing.

It was the decision of Carrier that the time span of two (2) hours and fifteen (15) minutes would be more than ample time for the claimant in this dispute, Mr. Shake, to travel the required twenty (20) miles and make necessary repairs to provide proper protection for highway traffic before the next scheduled train of 9:15 A. M. would pass over this crossing.

As a result of the Carrier not calling the claimant, the organization presented a claim for three (3) hours and twenty-eight (28) minutes at over-time rate. Carrier saw no basis for the claim, and it was, therefore, declined. Copies of correspondence exchanged in connection with the claim are attached and identified as Carrier's 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: The Brotherhood claims that Carrier was required, by Rule 18(a) of the Agreement, to call Signal Maintainer Shake when signal trouble was reported on his territory at 3:32 A. M. on the claim date. Instead Carrier waited until Signal Maintainer Shake reported on his regular turn and had him make the necessary repairs during that turn.

The Board finds that the following language from Award No. 11994 (Seff) may be applied to this case.

"It should also be noted that the necessary repairs to the signal were made by the signal maintainer assigned to the territory during his regular working hours. The Carrier had the right to determine when to have the work performed, and the exercise of such right could not be a proper basis for any claim under the Agreement."

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 Carrier did not violate the Agreement.

AWARD

The Claim is denied.

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1971.