

 Award No. 18879

Docket No. SG-19179

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SEABOARD COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad Company:

On behalf of signal shop employe J. E. Graham for 8 hours and 45 minutes overtime pay account Signalman G. H. Grant was used for overtime work in connection with restoring switches to operation in Hamlet Yard on Sunday, August 3, 1969.

[Carrier's File: 15-16]

EMPLOYES' STATEMENT OF FACTS: On Sunday, August 3, 1969, an off day for all employes involved in this dispute, damage occurred to switches and retarders in the Hamlet Yard, Hamlet, North Carolina, the repair of which required signal forces in addition to those assigned to the Hamlet Yard.

Carrier consequently called and used Signal Maintainer W. H. Robinson, Aberdeen, North Carolina; CTC Inspector B. S. McGirt, a member of the Hamlet Signal Shop; and Signalman G. H. Grant, Chester, South Carolina.

J. E. Graham, also a member of Hamlet Signal Shop, as was B. S. McGirt, and senior to Gang Signalman G. H. Grant, was available and would have responded, but was not called and used for this overtime service.

A claim was therefore filed on Mr. Graham's behalf for 8 hours and 45 minutes overtime pay, an amount of time equal to that worked by Gang Signalman Grant who was his junior.

The dispute 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 Exhibits Nos. 1 through 7. There is an Agreement in effect between the parties bearing an effective date of July 1, 1967, which is made a part of the record in this dispute.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: At Hamlet, N. C., the Carrier has a large automatic car retarder yard. Early Sunday morning, August 3, 1969,

Vice President to General Chairman, March 5, 1970.

"Confirming conference discussion with Mr. Dick on February 19th, covering 'Claim on behalf of signal shop employe J. E. Graham 8 hours and 45 minutes overtime account Signalman H. G. Grant was used for overtime work in connection with restoring switches to operation in Hamlet Yard on Sunday, August 3, 1969.' Item #7 of your conference listing of February 2nd.

You did not present anything new in support of the claim and you were advised there was no reason for changing our decision of January 21st."

General Chairman to Vice President, June 4 1970.

Reference is made to the claim in behalf of J. E. Graham for 8 hours and 45 minutes overtime account signalman his junior, G. H. Grant, was used for overtime work in connection with restoring switches to operation in Hamlet Yard on Sunday, August 3, 1969, your File No. 15-16.

Your statement that Signalman J. E. Graham is assigned to the Hamlet Signal Shops, which assignment does not include Hamlet Yard and the retarder system, is not consistent with the facts in this instant case. CTC Inspector B. S. McGirt is also assigned to the Hamlet Signal Shops, however, he was used to assist with restoring the switches to operation the same as Signalman G. H. Grant.

We are sure you are aware of the fact that Signalman J. E. Graham had previously been used in Hamlet Yard on numbers of occasions without his qualifications being questioned."

Vice President to General Chairman, June 16, 1970.

"Yours of June 4th with further reference to claim filed in behalf of Signalman J. E. Graham, Hamlet Signal Shop for 8' 45" overtime account Signalman G. H. Grant being used to assist in restoring switches and retarders to service in Hamlet Yard on Sunday, August 3, 1969.

It is a fact that Mr. Graham is assigned to the Hamlet Signal Shop and such assignment does not include Hamlet Yard and the car retarder system. Therefore, he could have no valid claim to and there is no basis for the payment claimed for the work performed on the car retarder system. It is appropriate here to cite the holding in Third Division Award 17150 that:

'A careful examination of the record before us reveals that Claimant failed to meet the burden of proving a superior right to the work performed. Seniority, standing alone, is not sufficient. The claim must, therefore, be dismissed.'

OPINION OF BOARD: This is a claim based on Claimants alleged right to overtime which was given to Signalman G. H. Grant who is junior to Claimant.

Nowhere on the property or in its submission to this Board has the Organization cited a rule in the agreement alleged to be violated. In its initial response on the property the Carrier replied "I find no basis for this claim in behalf of Signalman Graham, you cited no covering rule and therefore the claim is declined."

We are unable to interpret and apply the agreement between the parties without a citation of the part of the agreement on which the claims based.

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December 1971.