



Award No. 19140

Docket No. SG-19189

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, 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 Signalman C. F. Phillips for five and one-half (5½) hours at overtime rate for July 6, 1968, account not called to perform overtime work at Berea, Kentucky. (Carrier's File: G-265-2)

EMPLOYEES' 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 C. F. Phillips is regularly assigned as Signalman on Carrier's signal gang with C. C. Hacker, Signal Foreman.

It has been past practice to call the senior available employee when overtime service is required of a part of a group of employees who customarily work together.

On July 6, 1968, a derailment occurred at Berea, Kentucky. Foreman Hacker was instructed by the Carrier to get two members of his gang and go to the derailment. Foreman Hacker picked up two of his men (signal employees) at their homes who are junior in seniority to Mr. Phillips and used them at the derailment.

Claimant Phillips was available but not called for service at the derailment.

No attempt was made by the Carrier to contact the Claimant for the overtime work at the derailment even though it was aware that the two signal employees called were junior in seniority to the Claimant.

Carrier asserts that Claimant was not available due to Claimant not having a telephone in his home and the foreman not knowing where he lived. The record will show that Carrier offered no proof to support its assertions.

The Brotherhood contends that Claimant was available and that no attempt was made to contact him for this overtime work. The record herein contains evidence to support our contention.

A claim was filed by the Local Chairman under date of July 27, 1968 on behalf of the Claimant for five and one-half (5½) hours at overtime rate for hours worked by the two junior members of Carrier's signal gang.

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

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: A derailment occurred at 1:42 A. M. on July 6, 1968, at Mile C-132, near Berea, Kentucky, which created an emergency situation requiring overtime work.

Mr. E. E. Webster, Assistant Signal Supervisor, instructed Signal Foreman C. C. Hacker to call two members of his gang to perform necessary repair to the signals which had been damaged by the derailment.

Mr. Phillips, the claimant in this dispute, a member of Mr. Hacker's gang, was not called because he did not have a telephone and neither had he advised Mr. Hacker where he could be located.

As a result of Mr. Phillips not being called, the organization presented a claim for five (5) hours and thirty (30) minutes at overtime 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 "II".

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: On July 6, 1968 a derailment occurred at Berea, Kentucky. One Foreman Hacker was instructed to get two members of his gang for work at the derailment site. The Claimant was senior to the two men Foreman Hacker obtained to do the work. It is the position of the Organization that in failing to call Claimant the Carrier violated Rule 17(d).

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

Foreman Hacker testified that Claimant had no telephone and that he did not know where he lived. The Organization has taken the position that Foreman Hacker did not do enough to ascertain how to contact Claimant sufficient to meet compliance with the rule. They suggest that a check of company records would have yielded the necessary information.

This was an emergency situation. We have held many times in the past that where an emergency exists the Carrier is given greater latitude. Award 17795 (Quinn) has wording that fits the case at bar particularly well:

"* * * We have held that in an emergency the Carrier should be permitted to exercise latitude in meeting the situation. There is

nothing in the record to indicate that Carrier's purpose in the use of employees of another seniority district was to evade the application of the seniority principle or to circumvent 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 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 21st day of April 1972.