

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21296
Docket Number SG-21253

James C. McBrearty, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company:

(a) On or about December 15th and 16th, 1973, the carrier violated the current Signalmen's Agreement, when it assigned and/or permitted the work of repairing the signal pole line at various locations in the Arlington Heights, Ill. area, which is located on the Central Seniority District to Mr. R. Deakin, Signal Mtnr. at Reedsburg, Wis., Mr. D. Hooker, Signal Mtnr. at Evansville, Wis., and to Mr. J. Mochenbacher, Ldr. Sigm. Madison, Wis. These employees are assigned to the Northwestern Seniority District and hold no seniority on the Central Seniority District where the work was performed.

(b) Carrier now be required to compensate three (3) signal employees on the Central Seniority District the amount of time consumed by the Northwestern District employees whom should have been called under provisions of rule 15A and 20(a) account of this violation. Following are the names of the claimants.

R. J. Scheer.

R.N. Cimoehowski.

T. Zubb.

/Carrier's file: 79-8-1747

OPINION OF BOARD: On December 13 and 14, 1973 due to a severe snow storm in the Chicago area, which dumped some two (2) feet of snow on the ground, the Chicago area signalmen worked long hours in repairing pole lines. It was necessary to have additional repair work performed as a result of the snow storm, on Saturday and Sunday, December 15 and 16, 1973. The Signal Supervisor in charge of the Arlington Heights area, H. L. Tomkins, called Terminal District Signal Supervisor S. Hoffer, and requested the assistance of additional Central Seniority District Signalmen working under Mr. Hoffer, to work in the Arlington Heights area on the weekend. Signal Supervisor Hoffer called all of the signalmen whom he thought was available, but they turned down the opportunity to work on the weekend because they were exhausted from working long hours on December 13 and 14. The three claimants, who were signal maintainers assigned to the Suburban territory, were not called because Carrier felt they would be needed in case of an emergency in the Suburban territory, where they were assigned. Claimant Zubb was assigned to Glencoe (under the jurisdiction of Signal Supervisor Tomkins), Claimant Cimoehowski was assigned to De Val (Des Plaines, Illinois), and Claimant Sheer

was assigned to the Lake Street Tower, in downtown Chicago. None of these three (3) claimants were called, because the Signal Supervisors felt these men would be needed on their own territory.

As a result, the Signal Supervisor used three (3) signalmen from the Northwestern Seniority District, who were assigned at Reedsburg, Evansville, and Madison, Wisconsin.

Claims are presented in behalf of the three (3) Central Seniority District signalmen, for payment on Saturday and Sunday at double time rate, on the basis of their contention that they should have been used on their seniority district before utilizing employees from outside the seniority district.

Rules in the present Agreement which have a bearing upon the present dispute are as follows:

SENIORITY DISTRICTS. 35. (a) Except as otherwise provided, referring to temporary transfers to other districts, seniority rights of employees are confined to one seniority district.

There shall be five seniority districts, as follows:

Central	Supvr.	Comm.	& Signals	Chicago
Illinois	"	"	"	West Chicago
Western	"	"	"	Boone
Northern	"	"	"	Milwaukee
Northwestern	"	"	"	Madison

Seniority districts as now established will not be changed except by agreement between the system general chairman and the officer in charge of personnel.

EMERGENCY WORK. 20. (a) An employee assigned to a section, shop, or plant will not be required to perform work outside such section, shop, or plant not covered by his assignment, except in case of emergency when there are no other qualified signalmen available, and when so employed will be allowed additional compensation on basis of one-half regular hourly rate for time worked. Men will not be required to remain away from their section, shop, or plant in excess of three days. This rule does not apply to helpers or assistant signalmen who may be temporarily advanced to fill a temporary vacancy.

CALLED TO REPORT FOR WORK OUTSIDE REGULAR HOURS. 15. (a) Employees released from duty and called to perform work outside of and not continuous with regular working hours will be paid a minimum allowance of two hours and forty minutes at rate and one-half. If held longer than two hours and forty minutes they will be paid at rate and one-half, computed on the actual minute basis. Time of employees called will begin at time called and will end when released at designated headquarters, unless release is accepted at another point, except that time in excess of one hour from time called to time reporting at designated headquarters or other agreed to point will not be included.

SUBJECT TO CALL. 16. (a) Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railway, and will notify the person designated by the management where they may be called. When such employees desire to leave their home station or section they will notify the person designated by the management that they will be absent, about when they will return, and, when possible, where they may be found. Unless registered absent, regular assignee will be called.

In reviewing the instant case, the Board finds that Rule 35(a) in setting up five (5) separate seniority districts gives employees within each of the districts first claim on any work performed within their particular district.

As was stated by this Board in Award 13832 dealing with language similar or related to Rule 35(a):

Once Carrier has decided that certain work should be done, however, the employees have rights which come into play and cannot be ignored. Among these rights is the right to be preferred over other employees for work to be performed in the district. If this right is ignored, the senior employees suffer a monetary loss. They have been deprived of the earnings which would have accrued from that work.

Next, looking at Rule 20(a) we must inquire whether there were indeed "no other qualified signalmen available."

Carrier contends that the three (3) Claimants were not "available" within the meaning of Rule 20(a), because they would be "needed in case of an emergency in the Suburban territory, where they were assigned." The record clearly shows the three (3) Claimants were not working at the time, however, and were not called first, even though they were in the Central Seniority District.

Several past awards of this Board have dealt with the interpretation to be given to the word "available."

In Award 20562 the Board said:

...the Carrier's assertion that most of the Claimants worked on the claim date, plus overtime, and declined overtime during the claim period is no defense.

Similarly, in Award 16946 the Board noted:

The language of Rule 38(b) is clear that all the burning involved belonged to maintenance of way welders, with the single listed exception which is not here applicable, and its assignment of the work to other than a welder violated the Agreement. Claimant was available as he was performing work where assigned by Carrier in the immediate vicinity.

Also, in Award 15497 the Board pointed out:

Carrier argues that the Claim should be denied because "there were no signal employees available to perform the work" and the Claimants were on duty and under pay at the times the involved work was performed.

These arguments are not valid. As we said in Award 13832 (Wolfe)

"The fact is that Claimants were working where Carrier has assigned them, hence were not only available but Carrier was availing itself of them."

Finally, in Award 13832 the Board explained:

Carrier's second defense, that Claimants were not available, is equally invalid. The fact is that Claimants were working where Carrier had assigned them, hence were not only available but Carrier was then availing itself of them. If they were not available at the time and place where the extra work was to be done, it was because Carrier chose not to assign them there.

Therefore, in line with our earlier awards, the Board must conclude that the Claimants in the instant case were indeed "available" within the meaning of Rule 20(a), and thus should have been called first, before bringing in employees from the Northwest Seniority District.

In light of the foregoing, the Board finds there is no need to delve into the additional question of whether two (2) feet of snow on the ground is an "emergency" within the meaning of Rule 20(a).

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 12th day of November 1976.