

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21767  
Docket Number SG-21569

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Robert W. Blanchette, Richard C. Bond  
( and John H. McArthur, Trustees of the  
( Property of Penn Central Transportation  
( Company, Debtor

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former New York Central Railroad Company-Lines West of Buffalo (now Penn Central Transportation Company):

System Docket W-67  
Northern Region - Michigan Division

Claim on behalf of D. E. Katz, Signal Maintainer, Homer, Michigan, for five (5) hours punitive rate, account G. W. Gowanlock, Leading Signal Maintainer, Jackson, Michigan, was called and performed work on Mr. Katz's assigned territory on November 19, 1974.

OPINION OF BOARD: Claimant did not perform certain work in his territory on the claim date. Although Carrier asserts that it got no answer when it telephoned the Claimant at home; nonetheless, it allowed him five (5) hours at the straight time rate. Claimant seeks payment at the punitive rate.

It appears that the only issue before us is whether or not the punitive rate should have been paid.

While it is not questioned that Claimant would have received pay at the punitive rate had he performed the work on the claim date, Carrier resists the claim because the agreement provides for such a rate only when the employee performs service - not when work is not performed. Carrier cites certain Awards in support of its position. See, for example, Awards 4616, 6107, 13191, 17745, etc.

In our view, Award 19947, involving these same parties, controls the outcome here. There, the Board considered the conflict in prior Awards, and concluded that the "straight time" Awards (which distinguished rights to perform work and actual performance) were not sound. Instead, it followed the "punitive" rate determinations "...laid down in Award 13738...."

In argument to this Board, Carrier sought to show what it considered to be the inconsistency in our approach to the entire damage question, but we do not - in this Award - seek to reconsider that entire topic. If the Claimant had been called to work, he would have been compensated at the punitive rate. Under those circumstances, and consistent with Award 19947, we will sustain the claim.

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. Paulis  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1977.