

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22402
Docket Number SG-22312

Abraham Weiss, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Atlanta and West Point Railroad Company-
(The Western Railway of Alabama
(Georgia Railroad

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atlanta and West Point Railroad Company-The Western Railway of Alabama:

On behalf of Telephone Maintainer F. L. Thigpen and Assistant Telephone Maintainer M. L. Johnson, for two hours and forty minutes overtime pay each account carrier using Signal Maintainer J. F. Mitchell to clear telephone trouble on July 17, 1976, at M.P. 85.2; and on behalf of Assistant Telephone Maintainer M. L. Johnson for one hour and fifty minutes overtime pay account carrier using Signal Maintainer J. F. Mitchell from 4:00 p.m. to 8:30 p.m. July 18, 1976, to clear telephone trouble at College Park, Ga." /Initial claim for July 18 was for two hours and forty minutes for Thigpen, and four hours and thirty minutes for Johnson, but Carrier stated it paid each for two hours and forty minutes/

OPINION OF BOARD: On July 17, the dispatcher and message phones between Atlanta and Montgomery malfunctioned. The dispatcher, after ascertaining that the trouble was located west of LaGrange, called telephone maintainer Newsome whose territory was LaGrange west of Montgomery. Newsome was unavailable and a signal maintainer was instructed to make temporary repairs. The Claimants' assigned territory, which is contiguous with Newsome's, runs east of LaGrange to Madison. Claimants contend they were available and entitled to be called under Rule 59. Carrier, however, denies an obligation to call them because the malfunction was not on the Claimants' assigned territory.

The second part of the claim relates to July 18. On that date the malfunction occurred on the Claimants' territory. The dispatcher attempted to contact them but they were not available. The signal maintainer was directed to make the repairs. However, the dispatcher continued to try to reach the Claimants (Thigpen and Johnson) and reached them 2½ hours later, directing them to assist

in the repairs. But before Claimants left home the malfunction was corrected and they were instructed not to report. Each Claimant, accordingly, was paid a 2 hour and 40 minute call by Carrier.

The original claim for July 18 was 2 hours and 40 minutes for Thigpen and 4 hours and 30 minutes for Johnson. During the handling on the property each claim was reduced by 2 hours and 40 minutes because of Carrier's payment for the call.

The claims are based on Rule 18 and Rule 59. Rule 59 is particularly relevant. It reads:

"(d) Signalmen will perform only signal work. Telephone-Telegraph men will perform only communication work. When failures occur to either system or emergencies occur, if an employee assigned to the class of work is not available, employees of the other craft may be used to put the system in temporary working order. Permanent repairs will be made by employees in the craft of the work."
(underlining supplied.)

Rule 59 is fairly straightforward. It requires that the Carrier call those, and only those, employees who were reasonably available and who were assigned to the class of work in which the failure or emergency occurs. The rule does not, as the Carrier suggests, limit its application to calling only employees assigned to the territory on which the failure or emergency occurs but those assigned to the class of work who are available. There is no language in Rule 59(d) or the Agreement as a whole, to support the Carrier's argument. Although the Carrier contends that Rule 18 is such a rule, that rule only requires that the regularly assigned employe will be called when there is overtime on his assignment. It does not say that only this employe will be called on failures or emergencies. Rule 59 specifically encompasses these contingencies and states "an employee assigned..." will be called if available. It does not specify or limit which employe of that class will be called. The only limitation is availability, which can vary depending on the specific facts and circumstances of each case. As this Board has stated before, a Carrier is not obligated to use employees who are not reasonably available.

Our reading of the language of Rule 59 leads us to find that the claim for July 17 must be sustained. The employes have claimed that they were available on July 17; Carrier has never rebutted this. The Carrier might have successfully argued that the Claimants were not available, taking into account the nature of the emergency and the distance involved, but such argument was not made.

Regarding the claim for July 18, the Carrier has shown that the Claimants were called, but were not at home, and, therefore, they were not available. The Carrier fulfilled its obligation under Rule 59 when it attempted to reach the Claimants. Carrier was then free to use an employe of another class to make temporary repairs, assuming that no other telephone maintainers were reasonably available. The fact that the Claimants were later contacted and released and paid 2 hours and 40 minutes is irrelevant.

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 Employes involved in this dispute are respectively Carrier and Employes 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 to the extent shown in Opinion.

A W A R D

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1979.