

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24210
Docket Number SG-24108

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
{ Southern Pacific Transportation Company
{ (Pacific Lines)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (Pacific Lines):

On behalf of Signal Foreman P. E. Nickel for twelve hours' pay at one and one half times his regular rate account worked performed by Signal Technician on November 1 and 2, 1979."

OPINION OF BOARD: This Claim deals with the use of a Pacific Lines Special Signal Technician across seniority lines to assist a Texas and Louisiana Lines Signal Maintainer who was attempting to correct a signal failure at a road crossing in El Paso, Texas on November 1st and 2nd, 1979. Petitioner alleges that the work should have been assigned to a Pacific Lines Signal Foreman, the Claimant herein, who was assigned to a "joint gang" whose territory included the El Paso location.

The record indicates that the Carrier's assignment of the work would have been permitted under a letter agreement dated June 15, 1978. However, that agreement was cancelled by letter dated March 15, 1979.

Carrier argues that the Claim was amended in untimely fashion seeking twelve hours compensation at the overtime rate, in lieu of the straight time rate initially claimed. The changed claim was received some 143 days after the dates of the incidents complained of. Carrier's position is correct; the amendment was untimely and will be disregarded.

Carrier takes the position that the work in question was of an emergency type and justified the use of an employe from an otherwise improper seniority district (since no Signal Technician from the proper district was available). Furthermore, Carrier urges that the Claimant herein was fully employed on the dates in question, suffered no loss of compensation, and was an improper Claimant at best.

Petitioner argues that the emergency argument was not raised in the handling of this dispute on the property and furthermore is not supported by any evidence. In addition it is noted that Claimant herein had a right to work in the District involved and clearly was able to perform the work in question.

The Board notes that the issue of the identity of the Claimant has been raised in numerous prior disputes (see for example Awards 5195 and 20090 of this Division). This Board has held consistently that even though claims might have been made on behalf of other employees who may have had better rights to the claim, that fact is of no concern to Carrier nor does it relieve Carrier from the consequences of a violation of the Agreement.

It is noted that the emergency nature of the work was not established by the record, important though the repair job might have been. It is also evident that Carrier had no contractual right to assign the work to an employee who had no seniority on the T & L lines. With respect to the duration of the work, the record is clear that it encompassed seven hours, not twelve as claimed by Petitioner. Therefore, the Claim will be allowed for seven hours at straight time pay.

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.

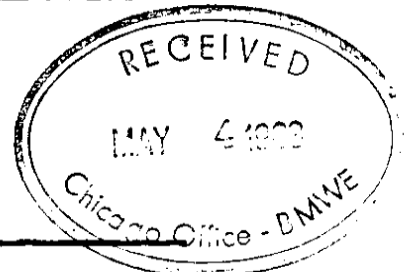
A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant



Dated at Chicago, Illinois, this 14th day of March 1983.