

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24778
Docket Number SG-24810

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company, et al:

(a) Carrier violated the Signalmen's Agreement, particularly Rule 36, when Project Engineer Reedy notified Leading Signalman R. A. Stults to perform a service for the Company after he was released from duty, but was refused payment of a minimum call of 2 hours and 40 minutes.

(b) Carrier now be required to compensate Leading Signalman R. A. Stults for a minimum call of 2 hours and 40 minutes at his overtime rate of pay in addition to any other pay he has received, because he was required to perform a service for the Carrier when Mr. Reedy instructed and required him to write a letter after working hours explaining a cut microwave cable, but did not pay him for this service. [General Chairman file: SR-260. Carrier file: SG-532]

OPINION OF BOARD: This is an overtime claim filed by the Organization on December 4, 1981 on behalf of the Claimant, Leading Signalman R. A. Stults. The claim alleges violation of current Agreement Rule 36 which states, in pertinent part, that:

"Employes released from duty and notified or called to perform service outside of and not continuous with regular working hours will be paid a minimum allowance of two (2) hours and forty (40) minutes at the rate of time and one-half for two (2) hours forty (40) minutes work or less..."

The case centers on a request by Project Engineer W. V. Reedy of Stults to write a letter to C. and S. construction Engineer B. C. Edwards explaining to him the circumstances relative to a microwave cable having been cut with a back hoe near Mile Post 731 at about 2:00 p.m. on October 26, 1981. There is no dispute over the fact that this request had been made. The dispute in the instant case revolves around whether Reedy ordered the Claimant to write this letter during tour of duty, or whether he ordered Mr. Stults to write it after his duty hours. Mr. Reedy claims the former, and Mr. Stults claims the latter. There is also no dispute over the fact that Mr. Stults did write the letter after his tour of duty on October 27, 1981 and that he gave the letter to Mr. Reedy on the morning of October 28, 1981.

It is well established that the National Railroad Adjustment Board will not substitute its judgment for that of Carrier's when it is a question of credibility unless the record before it warrants that the case in question be deemed an exception in terms of substantial evidence which has been defined as such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs Labor Board 305 U.S. 197, 229). A close review of the record before it in this case shows that the Claimant presents a witness as evidence that he was ordered to write the letter at issue after duty hours. No such evidence on the part of the Carrier is presented. Without denigrating the credibility of either party, but strictly from an evidentiary point of view, the instant claim must be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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:


Nancy J. Sever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April, 1984