

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26693
Docket Number SG-26406

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Central of Georgia Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Central of Georgia Railroad Company.

On behalf of Central of Georgia Signal Maintainers T. L. Ricks, headquarters East Point, Ga., L. D. Brown, headquarters East Point, Ga., Raymond Askins, headquarters Griffen, Ga., and Traveling Signal Maintainers R. K. Baker, headquarters East Point, Ga., and R. O. Danials, headquarters Millen, Ga., for the following:

(a) Carrier violated the Signalmen's Agreement with the Central of Georgia Railroad, particularly the Scope and the understanding between the Brotherhood of Railroad Signalmen General Chairman and General Superintendent F. H. McIntyre that if the Brotherhood agreed to let a Southern Signal Gang repair ice storm damage near Americus, Ga. that no Central of Georgia Signal employees would lose any time because of this action, when they worked seven Southern Railway Signal Gang employees and denied the claimants a right to perform this work on January 22, 23, 24 and 25, 1983, working a total of 136 man hours at the overtime rate.

(b) Carrier now be required to compensate the above named claimants for a total of 136 man hours or 27 1/5 hours each at their overtime rate of pay in addition to any other pay they have received because they were denied overtime work because the carrier used Southern Railway Signal Gang employees in violation of the Scope and the understanding reached with General Superintendent McIntyre on sending the gang to work on the Central of Georgia Railroad. (General Chairman file: GC-8L Carrier file: SG-567)."

OPINION OF BOARD: On January 20 and 21, 1983, a severe ice storm caused the Carrier's signal system to become inoperative on three of its lines involving about 260 of its 1500 mile system. To expedite repairs, Carrier's General Superintendent of Signals and the Organization's General Chairman made an oral agreement permitting Southern Railway signal forces to work on Central of Georgia lines restoring service. Repair work was performed from Saturday, January 22, through Tuesday, January 25, by a combined force consisting of 16 Central of Georgia employees and 7 Southern employees. Eight Central of Georgia employees were not utilized in the emergency repair work. Claim is made on behalf of 5 of these 8 on the basis that they should have also been used, on overtime, on the repair work.

The General Chairman contends he entered into the oral agreement allowing Southern signal employees to repair storm damage on the Central of Georgia on the condition that all available Central of Georgia signal employees would also be used and none would lose time because of this. The Superintendent of Signals contends it was his understanding every available Central Employee would be used except for a few maintainers who would not be sent to work in the storm area because they were needed to cover any trouble that might arise on lines not affected by the storm.

In handling this matter on-the-property and in arguments before this Board, the Carrier and the Organization have both taken bifurcated positions on the application of the oral agreement and/or the provisions of their written contract. For example, the Carrier contends that, although it did reach an oral understanding with the Organization on the use of Southern employees to do Central of Georgia work, the situation, nonetheless, was an emergency and, thus, under recognized emergency applications existing in the industry, it had license to have such emergency work completed as quickly as possible without Claim of the Organization. The Organization, on the other hand, contends that, because a disagreement developed concerning the terms and conditions of the oral agreement, it is, in effect, no agreement and, thus, the use of Southern employees to perform Central of Georgia work violated the Central of Georgia Scope Rule.

It is undisputed in this record that, at the time of the incident, the parties freely and openly entered into an oral agreement which they intended would control the use and assignment of both Southern and Central of Georgia employees performing emergency work needed to restore service to the lines damaged by the ice storm. Neither party has suggested that the two representatives making the agreement were without authority to do so. For the Organization, the oral agreement provided additional overtime work opportunities for its Central of Georgia members. For the Carrier, it provided an immediate source of additional skilled personnel.

This oral agreement has the same status under the law as if it were a written document. (Second Division Award 5842) It is the primary device regulating the assignment of Southern and Central of Georgia personnel utilized for completion of the emergency work. Accordingly, arguments (raised for the first time after a dispute developed on its application) concerning general emergency exceptions to a Scope Rule which might prevail in the industry (which may allow Carrier license to use Southern employees to do Central of Georgia work without claim of Central of Georgia employees) or arguments that a disputed oral understanding cannot vary the terms of the parties written (which may prohibit use of Southern employees in the performance of Central of Georgia work) are misplaced.

When the emergency work was being jointly completed by Southern and Central of Georgia employees, it was, by the parties' specific design, assigned under and controlled by the application of the oral agreement not the parties' written working agreement and any existing interpretations thereto. Now, because a dispute exists on the application of the oral agreement, neither party, after the fact, is free to ignore its terms, repudiate their commitments and revert back to their real or imagined rights under their written agreement.

We are persuaded from review of this record and the argument made before us at the Oral Hearing that, at the time the oral agreement was made, both parties were of the clear understanding that all available Central employees would be given the opportunity to participate in the work of restoring service in the storm damage area. We are also persuaded that "available" was not conditioned on considerations that certain Central of Georgia employees would be retained in their districts in anticipation of a local call out. In numerous exchanges occurring over a two year period, the position of the Organization was that the oral agreement on availability was not altered in any of its writings in the slightest degree. On the other hand, variances in the stated position of the Carrier generate a less positive picture.

Moreover, the beneficial considerations conveyed by the oral agreement further support a conclusion favoring the Organization's interpretation. The Organization was without complaint permitting Carrier to use Southern employees to perform Central of Georgia work. First, though, they wanted all available Central of Georgia employees to be used. If the interpretation of the Carrier was to be adopted, the Organization would be considered as making an agreement permitting Southern employees to perform a considerable amount of Central of Georgia work without any quid pro quo. This seems unlikely.

Accordingly, on this record we find that the oral agreement was breached when Carrier did not use "all available" Central of Georgia signal employees in repairing the sleet storm damage. Claim is made on behalf of five of the eight employees not used. The Carrier has questioned availability of two of the five Claimants, Brown and Baker, who had notified their Supervisor they would not be in to work because of inclement weather. It is our view that Brown and Baker by their own acts were not available for work in the storm damage area, and their Claims are denied.

Each Claimant seeks twenty-seven and one-half (27 1/2) hours of overtime which is arrived at by dividing the total overtime hours worked by Southern employees (136) by the number of Claimants. This formula suggests that, if there were but one Claimant, he would be entitled to 136 hours of overtime. We find the seven Southern employees averaged 19.4 hours overtime. They were assigned to Central of Georgia work. Accordingly, we will sustain the Claims of Ricks, Askins and Daniels for 19.4 hours each at the overtime rate.

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.

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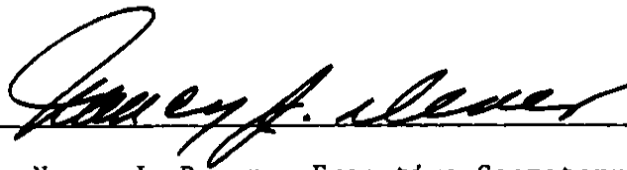
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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.