

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27132
Docket No. SG-27310
88-3-86-3-425

The Third Division consisted of the regular members and in addition Referee John E. Cloney when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

On behalf of Brother K. S. Burcham, of Signal Gang 9 for 8.5 hours at his punitive rate of pay account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 5-A-2(a) when, on February 5, 1985, it used two junior Signalmen in the regular 'Hump Gang' to perform overtime signal work at Conway. Carrier file: SD-2218."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

In late January and on February 1, 1985, Signal Gang No. 9, headquartered at Mingo Junction, Ohio, and Signal Gang No. 5, headquartered at Conway Yards worked together performing signal work on retarders at Conway Yard. February 2, 1985, was a normal rest day. On February 1, 1985, Carrier assigned some of the members of Signal Gang No. 5 to work the rest day. Claimant of Signal Gang No. 9 was senior to some of the Gang 5 members who worked.

Rule 5-A-2 of the Agreement provides:

"(a) When it is known in advance of the end of a tour of duty that a portion of a gang is to be worked on a subsequent tour of duty (not a part of their regular assignment) or continuous with the current tour of duty, those with the greatest seniority in the class who were actually performing the work prior to the overtime will be given first opportunity for the overtime."

On March 10, 1985, the Organization filed claim alleging that "On February 2, 1985, two men were requested to work overtime, that are junior in seniority" We note that the claim as progressed to this Board cites February 5, 1985, as the date of the alleged violation. This is an obvious typographical error. All handling on the property referred to the February 2 date.

On May 6, 1985, Carrier declined the claim because Claimant was assigned to Gang 9 under the direction of Foreman Guy on January 30, 31 and February 1, 1985, and no employees assigned to Foreman Guy worked on February 2, 1985.

On June 2, 1985, the Organziation appealed noting that Rule 5-A-2 does not define the term "Gang" but asserted:

"historically all men working at the same job at a given location have been described as a Gang without the requisition of all of the men working for the same foreman."

This assertion was neither refuted or commented upon during handling on the property.

Carrier argues Gang 9 was used at Conway to assist the Conway Hump Gang due to the large amount of work necessary to rebuild the retarders. Each gang worked under its own foreman.

Rule 5-A-2 does not define the term "gang" but we believe Carriers' limiting of the term to groups of employees supervised by the same foreman is too restrictive and unwarranted. Here employees of a class (Signal Employees) were all assigned to the same task (rebuilding retarders) at the same location at the same time. We hold the group constituted a "gang" within the meaning of Rule 5-A-2 and therefore those "with the greatest seniority in the class" were entitled to work the overtime.

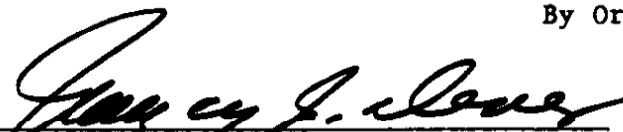
The Organization stresses Claimant is entitled to be paid at the punitive rate, but we do not agree. Claimant was not required to perform work on February 2, 1985. While we disagree with Carrier's interpretation of Rule 5-A-2 there is no evidence suggesting anything other than a good faith attempt at compliance. Compensation is to be at straight time rate.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1988.