

The Third Division consisted of the regular members and in addition Referee Gil Vernon 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):

Claim on behalf of T. J. Finegan, Sr., 037918 Inspector C&S, with headquarters at Cola Tower, PA:

A. Claim that the Company violated the current Agreement between Consolidated Rail Corp. and Brotherhood of Railroad Signalmen, particularly APPENDIX 'P', Rule 6, when, on the date listed below, they used D. A. Dunkle, Inspector C&S, with headquarters at Lemo C&S, instead of Maintainer Finegan, Sr., to clear a TOL over the three switch at Rockville Interlocking.

November 28, 1984. 2:00 AM to 7:00 AM. Five hours.

B. Claim that since T. J. Finegan, Sr., who held a Maintainers position on the above date was not given the opportunity to perform the extra duty mentioned above, that he be paid a total of five (5) hours at the time and one-half rate of pay - \$18.24."

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.

The basic facts are undisputed. On Wednesday, November 28, 1984, D. A. Dunkle, Inspector C & S, was called at 2:00 A.M. for a failure at Capitol Interlocking, which is a location in his territory. When he finished work at Capitol Interlocking, he was directed by the dispatcher to Rockville Interlocking for a train that was stopped due to a TOL (Track Occupied Light) in No. 3 switch at 4:15 A.M. The No. 3 switch is located on the territory of the Claimant.

It is also undisputed between the Parties as to the contract language which controls this dispute. Appendix P is the language the Parties developed specifically to govern overtime call-out situations. Section 6 and 9 of Appendix P are most applicable. They read as follows:

"6. The Signal Maintainer assigned to that position in the section involved will, if he has added his name in accordance with Item 5 above, be listed first on the calling list for his section. If more than one Signal Maintainer have the same responsibilities and territory, they will be listed in class seniority order.

"9. A reasonable effort will be made to comply with the procedure outlined above but this shall not be permitted to delay getting a qualified employee to report promptly at the point necessary to cope with the situation."

The Parties disagreement over the application of Rules 6 and 9 under these circumstances can be succinctly summarized. The Carrier believes the use of Mr. Dunkle was proper. They argue Rule 9 suspends the normal overtime procedure if it would "delay getting a qualified employee to report promptly at the point necessary to cope with the situation." They assert that Inspector Dunkle, since he was working at a nearby location, Capitol Interlocking, was the qualified employee able to report promptly to correct the TOL on #3 switch at Rockville Interlocking to prevent further delay to the stopped train.

The Organization acknowledges that Section 9 gives the Carrier some latitude in cases where it was necessary to get a qualified employee to report promptly. However, they stress that Section 9 also requires first that the Carrier will make a reasonable effort to comply with the calling procedure. In this dispute, they argue, no reasonable effort was made by the Carrier to comply with the rule. They suggest that had an effort been made to contact the Claimant, which there was not, the Carrier would have complied with the Rule. They also suggest that had they contacted the Claimant they would have discovered he could have reported promptly. Thus, in their opinion, there is no showing of emergency or train delay, and the Carrier has not demonstrated that Claimant could not have responded to the call prior to Inspector Dunkle.

It is the conclusion of the Board that the Carrier violated Rule 6 and Rule 9. The provisions of Rule 6 are not automatically suspended when prompt attention is required to remedy some situation. A "reasonable effort" must be made to comply with the calling procedure. Under these unique facts where an employee has already been called out in the middle of the night on an adjacent territory this wouldn't necessarily even mean that a call would have to have been placed to the Claimant. However, at a minimum, the Carrier would have to demonstrate that, at the time, they made a reasonable decision that had they called the Claimant (or others with similar standing), given his prepatory and travel time to the trouble spot relative to Mr. Dunkle's, that this would have caused more delay.

It is our opinion that the Carrier has not presented sufficient information to establish that it was anymore prompt to use Mr. Dunkle than the Claimant. It does not necessarily follow that it was more prompt to use Mr. Dunkle merely because he was already on the property. Moreover, we are not convinced the

Claimant is not the proper Claimant since he was in line for the work had a more senior employee not been available. The fact the more senior employee chose not to grieve doesn't change the Claimant's superior entitlement (relative to Dunkle) to the work. Nor does it excuse the Carrier's violation.

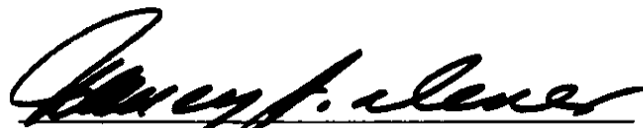
The remaining issue related to the remedy. The Carrier argues the claim is excessive and in any event only straight time should be allowed. Indeed the time claimed appears excessive. Additionally, the issue of straight time versus overtime was resolved in Third Division Award 26340 between the same Parties. Accordingly the instant case is sustained but only to the extent of straight time at the minimum of three hours set forth in Rule 4-B-2(b).

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1988.