

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

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

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 T. O. Washam for 3 hours pay at his punitive rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly APPENDIX 'P', paragraphs 8 and 10, when on November 20, 1985, it used an Assistant Supervisor to repair a Hot Bearing Detector at Burton City." Carrier file SD-2288.

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 employes 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 this case the Organization maintains that Carrier violated the Scope Rule by using an Assistant Supervisor to repair a hot bearing detection system at Burton City, after violating the calling provisions of "Appendix P" by calling the first six (6) listed employees only once and by removing Claimant's name from the calling list and not calling him at all.

The language of "Appendix P" reads as follows:

"APPENDIX 'P'

AGREEMENT DATED NOVEMBER 16, 1978 BETWEEN CONSOLIDATED
RAIL CORPORATION AND BROTHERHOOD OF RAILROAD SIGNALMEN
PROVIDING A PROCEDURE FOR CALLING C&S DEPARTMENT EM-
PLOYEES FOR TROUBLE INVOLVING MAINTAINERS WORK OUTSIDE
THEIR REGULAR WORKING HOURS

1. A form showing the information included in the attached sample will be used to record the calling and response to calls for work outside of employees' regular working hours.

2. Subject to other provisions of this Agreement, a calling arrangement will be established by Supervisors C&S and Local Chairmen jointly.

- (a) The calling arrangement will be subject to the concurrence of the General Chairman and the Senior Director-Labor Relations.
- (b) Should the Supervisor C&S and the Local Chairman be unable to agree upon a calling arrangement within 30 days after the effective date of this agreement, then the General Chairman and the Senior Director-Labor Relations will establish the arrangement.

3. On the basis of the calling arrangement, the form (as attached) will be prepared by the Supervisor C&S and placed in the hands of the employees designated to make calls and record responses to calls for work. The names of the persons so designated will be furnished to the Local Chairman and the General Chairman.

4. All of the information called for on the form must be recorded at the time the employee is called.

5. Qualified employees may have their names added to or removed from the list at their request if written notification is given to the Supervisor C&S forty-eight (48) hours in advance. Such employees must be able to report to the headquarters of the territory involved within one hour to call in the territory in which they have indicated a desire to be called.

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.

7. Employees subject to call for work outside of their regular tour of duty under this agreement must keep their name, address and telephone number on file with their supervisor.

8. Employees will be called from the appropriate list for work in the order in which their names appear on the list.

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.

10. In the application of this understanding two calls will be made to the first six (6) employees whose names appear on the calling list. One call will be made to other individuals on the list.

If an employee fails to respond to calls for service on five consecutive occasions, his name will be removed from the calling list and may be restored to the list only after he has complied with Item 5 above after having been removed from the list for a period of thirty (30) calendar days.

11. The forms referred to herein will be kept in the office where they are completed for a period of not less than three months and they will be available for review by the General Chairman and Local Chairman, B.R.S.

12. This agreement shall become effective December 15, 1978 and may be cancelled by either party by not less than 60 days written notice to the other party.

Signed at Philadelphia, Pa., this 16th day of November, 1978."

Carrier maintains that it complied fully with Appendix P and therefore was free to call a non-Agreement covered Supervisor under the terms of Appendix P, Item 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."

This Board finds that not only did Carrier fail to comply with the requirements of the calling procedure but a Supervisor not covered by the Agreement is not a "qualified employee" within the meanings of that term in Item 9.

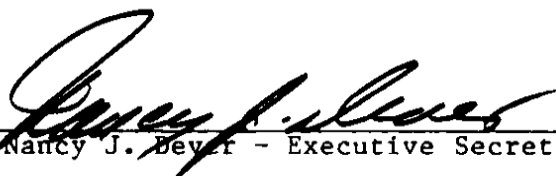
With regard to damages for the proven violation of Appendix P and the Scope Rule, we find no reason to depart from prior holdings of this Board that the appropriate remedy is a minimum three (3) hour call at straight time rates. See Third Division Awards 26340 and 27606.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1990.