

The Third Division consisted of the regular members and in addition Referee George S. Roukis 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 D. L. Allender for 16 hours pay at his punitive rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope Rule and Rule 4-B, when it allowed or permitted Signal Supervisors to perform Signal work at Solan Interlocking, on December 14 and 15, 1987." Carrier file SD-2482.

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.

The Organization charges that Carrier violated the Controlling Agreement, particularly the Scope Rule and Rule 4-B-2 when a Supervisor and an Assistant Supervisor performed protected work on December 14, 1987, and the same Supervisor performed protected work on December 15, 1987. On December 14, 1987, the Supervisor and Assistant Supervisor mounted a box to be used to house signal equipment on the side of the relay house at Solan Interlocking and on December 15, 1987, the Supervisor made signal circuit changes to add a push-button for the movement of trains. The Organization maintains that since Claimant who was on vacation at the time was available for this work, Carrier was obligated to inquire of him whether he wished to perform it. Specifically, it contends that it was a practice on the Western Region and Cleveland Division for employees to take calls while on vacation.

Carrier contends that since Claimant was on vacation from December 14 - 18, 1987; and did not advise management of his availability for work during this period, it was under no obligation to contact him. More pointedly, it asserts that employees observing paid vacation periods were not considered as being available for work.

In considering this dispute, the Board concurs with Carrier's position. Based on the record developed on the property the pivotal issue posed by the parties was whether Carrier was obligated to contact Claimant to determine whether he was available to perform the work on December 14 and 15, 1987, or whether Claimant was obligated to apprise Carrier of his availability for overtime work while on vacation. Since the Organization as the moving party has the burden of proving all aspects of its claim, including here, its contention of a past practice and since the on-situs record is devoid of tangible proof that such a practice existed, the Board must find for Carrier on this question. The Organization's Exhibit No. 9 attached to its Submission was not exchanged on the property and thus as new evidence is not properly before us. Carrier also has raised in its Submission new arguments such as its contention that vacation entitlement is governed by the provisions of the December 14, 1941 National Vacation Agreement. This material is also not properly before us. Upon the evidence, there is no proof that Carrier was obligated to ask Claimant whether he was available to perform overtime work while on vacation and accordingly, no justification to award him the punitive rate of compensation requested. We find that the Supervisor and Assistant Supervisor performed protected work on December 14 and 15, 1987, but no Agreement basis for compensating Claimant.

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 19th day of December 1991.