

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman 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 J. R. Peterson, for payment of 6 hours pay at his punitive rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, APPENDIX 'P', when on October 2, 1988, it failed to call him for signal trouble on his assigned territory at Rail-Highway Crossings MP 165.4 and 170.65." Carrier file SG-49.

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 claims that Carrier violated the provisions of Paragraphs 6 and 9 of Appendix P (dated November 16, 1978) which provides:

"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 record indicates that while Claimant was on a normal rest day a problem occurred on two crossing gates in his regular territory about five miles apart. Both problems involved malfunctioning crossing gates, characterized by Carrier as emergencies. Carrier used a Signal Inspector who was working a few miles away to deal with the problems and did not attempt to call Claimant.

The Organization insists that Carrier was obligated to call Claimant, the proper Signal Maintainer for the territory, rather than the Signal Inspector. Further it is argued that there was no showing, even if an emergency, which the Organization denies, that Claimant could not have appeared at least as soon as the Signal Inspector.

Carrier argues that there was an emergency and it did the prudent thing under the circumstances. Further Carrier argues that the provisions of Paragraph 9 are suspended in the event of emergency situations such as this. Carrier also notes that even if a violation occurred, which it denies, punitive pay is not appropriate.

The Board notes that Third Division Award 27606 involving the same parties is almost identical to the instant matter. In that Award we said, inter alia, that the provisions of paragraph 6 are not automatically suspended when prompt attention is required to remedy a problem. Here, as in the case cited supra, a reasonable effort must be made to comply with the calling procedure. No such attempt was made here and it must be concluded that Carrier failed to conform to the proper procedure. The Claim must be sustained. Further, however, the proper remedy for violation such as this is straight time rather than the punitive rate (see Third Division Award 28131).

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 25th day of August 1992.