

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29495
Docket No. SG-29649
93-3-91-3-23

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company (UP)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (UP):

Claim on behalf of J. J. Friesen, for payment of five (5) hours and forty-five (45) minutes pay at his punitive rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope Rule and Rules 2 and 55, when it did not call him for overtime work and allowed or permitted a Signal Supervisor to perform the overtime signal work." Carrier file 900099. BRS Case No. 8228-UP.

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.

A Claim was filed by the Organization on grounds that the Carrier had violated Agreement Rules 1, 2 and 55 when it failed to call the Claimant on September 2, 1989, to do repair work on the crossing gates in Beatrice, Nebraska. Instead, the Carrier used a Manager to do this work. In denying the Claim, the Carrier stated that the regular Maintainer was checked out for the weekend, that the Claimant "...did not answer the call." After further handling of this Claim on the property, the Carrier wrote the Organization on July 20, 1990, that "...company records indicate that the Claimant was called and did not answer whereas you have alleged that the Company did not call" the Claimant on September 2, 1990 before the Manager did the work.

There is sufficient evidence of record to warrant conclusion that there was an emergency and that the repair work in question had to be done by someone as quickly as possible. According to the Carrier, which is not disputed by the Organization, lightning had caused malfunction of the crossing gates and the breaker in the breaker box had to be reset. The crossing in question saw fairly frequent traffic to a residential area and in the interest of public safety the Carrier wanted the repairs to be done as quickly as possible.

Was a call made to the Claimant? The Carrier states in correspondence on property that its "records" indicate that the Claimant was phoned and that he did not respond. The Organization objects to an exhibit furnished with the Submission of this case to the Board which deals with such "record" on grounds that it is new information. The Board need not rule on this objection because the exhibit contains no more or less information than the correspondence on the property and its evidentiary status is, therefore, superfluous. The only argument by the Claimant is that he did not get the call. The Organization argues that this could have been for a variety of reasons: the caller could have dialed the wrong number, the phone could have misdialed, or there could have been a malfunction in the phone system. All this is true albeit not particularly likely. An additional reason why the call may not have been received, however, could have been because the Claimant may not have been in the vicinity of the phone when the call was made and/or he simply missed the call. In terms of logic, such was equally possible as the reasons proffered by the Claimant. If the Claimant would have had an answering machine turned on there would have been more substantive proof in this case. But there is nothing in the record that such measures were taken by the Claimant. Ultimately this case boils down to an irreconcilable dispute over facts. Given the record before it, the Board will follow arbitral precedent in this industry and dismiss the claim (See Third Division Awards 21412, 26817 and 29015).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 21st day of January 1993.