

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31248
Docket No. SG-31353
95-3-93-3-172

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Montana Rail Link, Inc.

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Montana Rail Link, Inc. (MRL):

Claim on behalf of G.J. Fritel and T.G. Burdett for payment of four hours each at the time and one-half rate, and on behalf of M.O. Hardesty and L.A. Roberts for payment of 12 hours each at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Article D(3), when it failed to properly compensate the Claimants for service performed on various holidays in November and December of 1991 and January of 1992."

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 employee 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.

These Claims raise the question of proper payment for the performance of certain signal repair work on recognized holidays. The pivotal issue is whether the affected employees were called to perform work under emergency conditions within the meaning of the effective Agreement. Article D of the Agreement provides as follows:

"* * *

2. Employees notified or called to perform work under emergency conditions on Designated Holidays shall be allowed a minimum of four (4) hours at time and one-half for four (4) hours work or less, and if held on duty in excess of four (4) hours, time and one-half will be allowed on the minute basis.

NOTE: An emergency shall be defined as extraordinary circumstances, such as flood, snowstorm, hurricane, broken rail, earthquake, fire or strike, which results in the suspension, in whole or in part, of the Company's operations. Nothing herein shall be construed to require employees to cross a picket line during a strike.

3. Except as provided in Paragraph 2 above, employees called to perform work on such holidays shall be allowed a minimum of eight (8) hours at time and one-half rate.

* * *"

In Claim 1, the work involved bulb replacement in a light out signal. Claim 2 involved restoring power to hot box detectors. Claim 3 also involved hot box detector repairs as well as investigation of reported damage caused by an automobile crash. No damage was found. Claim 4 consisted of two separate instances of changing light bulbs in signals. Claim 5 involved resetting a breaker to restore AC power on a meter pole. Claim 6 involved two calls dealing with the repair of certain track indicators.

The Organization contends the disputed repair situations were not emergencies. First, they were regular or routine repair situations that did not constitute extraordinary circumstances. Second, none of them resulted in a suspension of Carrier's operations. Accordingly, the Organization contends the employees should be paid 8 hours for each call on the holiday under Article D(3). The Organization also produced evidence of past payment under Article D(3) for work of the same nature on the 1991 Memorial Day holiday.

Carrier contends that FRA regulations require repair of signal problems without undue delay. In addition, it notes that the listed examples of emergency circumstances in the note to Article D(2) is not all-inclusive. Finally, it asserts that its operations were delayed temporarily by the signal problems, which, in its view, satisfied the suspension of operations requirement of Article D(2).

In contending that the disputed work involved emergency conditions within the meaning of Article D(2), Carrier is raising an affirmative defense to the Claims. In so doing, it shoulders the burden of proof to establish the applicability and validity of the defense. This is especially so in view of the Organization's evidence of a past practice contrary to Carrier's position. Yet the on-property record contains only Carrier's assertions that the requirements of Article D(2) were satisfied. Even assuming the nature of the problems involved in these Claims constituted extraordinary circumstances, which is debatable at best in light of the examples listed, there is no actual evidence of suspension of operations or even any delays. On this record, therefore, Carrier's defense must be rejected and the Claims must be paid as presented.

AWARD

Claims sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of November 1995.