

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32232
Docket No. SG-32887
97-3-96-3-239**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Indiana Harbor Belt Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Indiana Harbor Belt Railroad (IHB):

Claim on behalf of J.A. Monaco for payment of three hours at the time and one-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Appendix ‘L’, when it used a junior employee instead of the Claimant to perform overtime work on March 20, 1995. Carrier’s File No. S-95-001. General Chairman’s File No. 95-31-IHB. BRS File Case No. 9686-IHB.”

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 were given due notice of hearing thereon.

On March 20, 1995, a Signal Maintainer was called to repair a broken gate and found that he could not do so alone. Thereafter, the Carrier contacted a Trainee for assistance. The Trainee provided the additional help required to complete the repairs.

The Organization states that the Carrier made an error in failing to call the senior employee as required by Appendix L, Paragraph 8 which states: "Employees will be called from the appropriate list for work in the order in which their names appear on the list." The Organization argues that the Claimant was available and denied his rights when the junior Trainee was called.

The Carrier argues that the call to the Trainee to assist in repairs complies with Appendix L, Paragraph 9, which states: "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." Carrier argues that the relative distance required for the Claimant to reach the site versus the time required for the junior employee justified its actions.

The Board takes serious note of the fact that absolutely nothing was presented on the property in this dispute except discussion of Appendix L, Paragraphs 8 and 9. The sole argument the Carrier raised in support of its action was that the junior employee lived closer to the damaged gate. The Organization argued that even if Paragraph 9 was applicable "a reasonable effort" was not made to comply with the Rule and the Claimant could have arrived without undue delay.

It is on the basis of the record provided by the parties as argued on property that we sustain the claim. Appendix L, Paragraph 9 states that the Carrier will make a reasonable effort to comply with the Rule. The Organization has shown that the Carrier made no effort. Accordingly, the claim must be sustained without benefit of the issues improperly raised in Submission. The Carrier's new arguments of an emergency and more importantly, that the Claimant had no right to the work may have been correct, but since the Carrier neither argued these issues nor disputed the requested relief, the Board has no option but to sustain the claim as presented.

AWARD

Claim 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 17th day of September 1997.