

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32462

Docket No. SG-32991

98-3-96-3-373

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: (

(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 K. J. Heburn Jr. for payment of three hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Appendix 'P', when it did not call the Claimant for overtime service on December 7, 1994. Carrier's File No. SG-848. General Chairman's File No. RM2730-86-395. BRS File Case No. 9840-CR."

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.

In the particulars of this instant claim, the Organization contends that the Carrier violated Appendix "P." The Organization and Carrier do not dispute the facts. On December 7, 1994 there was a trouble call specifically involving a hot box detector. On that date, the Carrier called out a Maintainer to handle the trouble call, rather than an Electronic Technician. The parties dispute whether or not the Agreement permits the Carrier to call Maintainers to perform the instant work.

The Organization supports its claim by submitting the revised call list negotiated under Appendix "P." It further asserts that the call list clearly requires the Carrier to call the Electronic Technician and not the Maintainer for this specific situation. The Carrier argues that its actions were in compliance and supported by Award authority holding that Maintainers can perform the work "absent a clear indication that component parts are involved in the work to be done" (Third Division Award 29770). It maintains that Appendix "P" applies only to Maintainers involving trouble calls outside of their regular working hours which was properly followed in this case.

A procedural argument was raised which needs comment. The Board is aware that early in the progression of the claim the Carrier argued that it was defective due to a lack of correspondence indicating that the Grievance Committeeman who filed the claim was a properly accredited representative of the Claimant. We note that the issue was raised again in Submission and before us, but do not find the Carrier's cited Awards on point or this issue fatal. On the property the highest Carrier officer dropped the argument and did not reject the grievance for any procedural error. In this claim and with this Agreement, the Board moves to merits (Third Division Awards 11987, 19884).

On merits, Appendix "P" is the proper Call Out Agreement. There is no dispute that Appendix "P" was the established procedure for calling out signal trouble. There is also no dispute that in this instant case the call to the Signal Maintainer was for hot box detector trouble. The call list as of April 1, 1992 had the following notation:

"For reports of HBD malfunctions, call Electronic Technicians K. J. Heburn (315-826-3772, Mobile 764) and J. D. Spencer (305-655-4439, Mobile 765) first."

That language is clear and supports the Organization's claim. As for damages, the parties dispute whether the overtime rate or the straight time rate is appropriate. This referee has applied both depending upon the particulars of the claim. In this instance,

the claim is sustained at the straight time rate of pay for the reasons given by Third Division Award 31154 holding that "on this property . . . proper payment for a violation [involving Appendix "P"] . . . should be at the straight time rate rather than at the punitive rate of pay."

AWARD

Claim sustained in accordance with the Findings.

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 21st day of January 1998.