

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35090
Docket No. SG-31730
00-3-93-3-749**

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

“Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (CONRAIL):

Claim on behalf of R. P. Milligan 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 failed to assign the Claimant to perform overtime service on his assigned section on January 24, 1992.” Carrier’s File No. SG-542. General Chairman’s File No. RM2405-58-193. BRS File Case No. 9163-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.

This case involves a claim by the Organization that the Carrier violated the Agreement between the parties, particularly Appendix P, when it failed to call the

Claimant for repairs and tests of a malfunctioning signal system at a grade crossing within the Claimant's territory. The continuously operating signal system was discovered by an Assistant Inspector who was on his way home. The Assistant Inspector performed the repair work, and the Claimant was not called.

The Organization asserts that the Carrier violated Appendix P when it failed to call the Claimant, who was the Signal Maintainer assigned to the affected section, to perform the work. Under Appendix P, which is an Agreement providing a procedure for calling C&S Department employees for trouble involving Maintainer's work outside their regular working hours, "[T]he Signal Maintainer assigned to that position in the section involved will, if he has added his name in accordance with [the agreement], be listed first on the calling list for his section." Appendix P further provides that: "Employees will be called from the appropriate list for work in the order in which their names appear." Appendix P further states that the Carrier is required to make a "reasonable effort" to comply with the procedures.

The Organization asserts that the Carrier made no effort at all to call the Claimant. It asserts that even while the Assistant Inspector commenced repairs on the malfunctioning signal system, the Carrier was obligated to call the Claimant to complete the repair work and make necessary tests to ensure proper operation of the system. The Organization asks that the Claimant be made whole for the lost work opportunity with the payment of three hours at the time and one-half rate.

The Carrier, on the other hand, asserts that Appendix P permitted the assignment of the Assistant Inspector to perform the repair work. The Carrier acknowledges that Paragraph 9 of Appendix P requires it to make a reasonable effort to comply with the overtime procedures, but it observes that provision also states that adherence to the procedures "shall not be permitted to delay getting a qualified employee to report promptly at the point necessary to cope with the situation." According to the Carrier, it was proper to utilize the Assistant Inspector to perform the repairs to the signal system because the malfunctioning crossing gate presented a public hazard. The urgency of the situation, the Carrier argues, permitted the use of an employee who was at the scene. In any case, the Carrier asserts, the repair work took only 25 minutes, and the Organization's claim for three hours' pay is excessive.

Based on our review of the record evidence, we have determined that the Organization's claim should be denied. The work was performed by the Assistant

Inspector under emergency conditions and was de minimus in scope. We recognize that the Rules set forth in Appendix P required that the Claimant be called first for work outside employees' regular working hours. We also consider prior Awards which state that Appendix P is not suspended merely because prompt attention to a problem is required. However, the Rules do not require the Carrier to delay emergency repairs while it makes arrangements for the arrival of a qualified employee to perform the work. Here, it is undisputed that the work was completed within 25 minutes, which means that if the Claimant had been called, the work would have been completed by the time the Claimant responded to the location.

Accordingly, because the repairs to the malfunctioning signal system were urgent and could be performed by the Assistant Inspector at the location, and because of the repairs were completed before the Claimant could have arrived at the location, we find that the Agreement was not violated.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 15th day of November, 2000.