

PUBLIC LAW BOARD NO. 4187

PARTIES) BROTHERHOOD OF RAILROAD SIGNALMEN
TO)
DISPUTE) NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

"Claim on behalf of Mr. B. V. Clyburn, Signal Maintainer, Narrows, Virginia; assigned hours 7 a.m. to 4 p.m.; meal period 12 noon to 1 p.m.; rest days Saturdays, Sundays, and holidays, that:

(A) The Carrier violated the rules of the Signalmen's Agreement, in particular Rule 108, Agreement dated April 20, 1981; and Rule 312, Agreement effective December 1, 1945, when the Carrier instructed Mr. Clyburn to suspend work on his regular assignment and to perform signal maintenance work on the territory assigned to Mr. R. M. Clark, as follows:

April 8, 1985 - 8.8 hours - removing switch from service MP V-307.
April 9, 1985 - 8.0 hours - removing switch from service MP V309.3.
April 10, 1985 - 8.8 hours - removing switch from service MP V-309.2.
April 11, 1985 - 12.5 hours - bonding rail MP V-306 to V-309.
April 12, 1985 - 8.5 hours - restoring switches to service MP V-308 to V-309.
April 15, 1985 - 13.7 hours - bonding rail and restoring switches MP V-309 to MP V-310.
April 16, 1985 - 12.7 hours - bonding rail and restoring switches to service MP V-309 to V-311.
April 17, 1985 - 12.8 hours - bonding rail and restoring switches to service MP V-309 to V-314.
April 18, 1985 - 12.0 hours - bonding rail and restoring switches to service MP V-314 to V-316.

Mr. Clark has been off work account of injury since February 12, 1985, and the Carrier has not filled this position.

(B) The Carrier should now pay Mr. Clyburn 97.8 hours at

the overtime rate of pay for the violations cited in part (A)." (Carrier File: SG-ROR-85-3; BRS File: 6975 - NW)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Claimant, a Signal Maintainer, claims he is entitled to payment of 97.8 hours at the overtime rate of pay in addition to other earnings on the various dates in question as a result of having been instructed to suspend work on his assigned territory during his regular work hours to perform signal work on the adjoining territory in connection with a Rail Maintenance Program.

It is the Claimant's and Organization's position that the work required of Claimant caused Carrier to be in violation of Rule 108 of the Agreement dated April 20, 1981 and Rule 312 of the Agreement effective December 1, 1945. These rules read:

"Rule 108: Signal Maintainer -

An employee assigned to a designated section or territory to perform work generally recognized as signal maintainer's work. Signal maintainer's work referred to herein primarily consists of the inspection, test, adjustment, repair and maintenance of all signals, interlockers and other signal apparatus and devices on the employee's assigned section or territory."

"Rule 312:

Employees will not be required to suspend work during regular working hours to absorb overtime."

The Carrier asserts there was no violation of the rules as cited or other rules of the Agreement when it had Claimant work on the adjoining signal territory as a result of the Signal Maintainer for that territory having marked off sick and then electing to undergo elective surgery for a wrist injury that had occurred several years ago and the bulletin advertising the vacancy went no-bid for three separate postings. Moreover, the Carrier says it had the right to utilize Claimant under Rule 306(k), which reads as follows:

"When overtime service is required on a Signal Maintainer's territory, the regular assignee, or employee filling such position, will be called first. If such employee is not available, an adjoining Maintainer or another Maintainer will be called. If such an employee

is not available, a Signal Test Man may be called."

The contentions of the parties notwithstanding, the record shows that Claimant had filed for and been granted an additional allowance of one hour's pay at his regular straight time rate of pay on 22 separate days during the period February 1985 to May 1985, including the nine days listed in the above Statement of Claim, in application of Rule 315.

Rule 315 reads:

"Except in case of emergency, an employee will not be taken from his regular territory or assignment. An employee used in an emergency off his regular assignment, during his regular tour of duty, will be paid an additional allowance of one hour's pay at his regular pro rata rate."

The facts as revealed by the record showing that both Claimant and the Carrier had construed assignment to the adjoining territory as having resulted from an emergency, and Rule 315 holding it to be permissible for an employee to be taken from his regular territory or assignment, this Board finds that neither party may now make a contrary contention with regard to this particular case and argue that the action was subject to other rules of the Agreement.


Accordingly, the claim will be denied without prejudice to a determination as to whether a vacancy per se on an adjoining territory constitutes an emergency, or an unforeseen combination of facts or circumstances which call for immediate action.

AWARD:

Claim denied.


Robert E. Peterson, Chairman
and Neutral Member


W. L. Allman, Jr.
Carrier Member


V. M. Speakman, Jr.
Organization Member

Roanoke, VA
October 9, 1987