

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**William H. Coburn, Referee**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**WABASH RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Wabash Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, particularly the seniority rules, when it used junior Signal Helpers to perform certain overtime work on June 26, 1958, and did not use senior Signal Helpers J. H. Hedrick and O. E. Calvert.

(b) The Carrier therefore be required to compensate senior Signal Helpers J. H. Hedrick and O. E. Calvert at the overtime rate of pay for the exact amount of time used by the junior Signal Helpers in performing the overtime work on June 26, 1958.

[Carrier's File: 116.6.]

**EMPLOYEES' STATEMENT OF FACTS:** Signal Foreman Martin was in charge of a signal gang working at Delphi, Indiana, installing interlocker and highway crossing protection facilities. On the afternoon of June 26, 1958, a severe storm caused damage to the signal wires and pole line approximately three miles east of Peru, Indiana. Signal Foreman Martin was instructed to take four Signalmen and three Signal Helpers from his gang and proceed to the location of the storm damage east of Peru and repair the line damage.

Signal Foreman Martin, three Signalmen, one Assistant Signalman, and three Signal Helpers left Delphi, Indiana by truck and proceeded to the location of the storm damage some 40 miles away, arriving at approximately 4:15 P. M. on June 26, 1958.

Signal Foreman Martin and the above-mentioned signal employes repaired the storm damage and returned to their headquarters at Delphi, Indiana, arriving at 10:30 P. M. the same evening.

In view of the fact that the three Signal Helpers who accompanied Signal Foreman Martin to assist repairing the storm damage were junior to other Signal Helpers in Signal Foreman Martin's signal gang, a time slip was submitted by senior Signal Helpers O. E. Calvert and Hilton Hedrick to Superintendent Signals & Communications G. A. Rodger, claiming overtime from 5:20 P. M. to 10:45 P. M. at the overtime rate.

The claim should be dismissed for lack of jurisdiction and if not dismissed then denied for the reason that it is not supported by the rules of the agreement.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On claim date, Claimants were working as Signal Helpers in a signal gang engaged in the installation of interlocker and highway crossing protection at Delphi, Indiana. At about 2:30 P.M. the Foreman of the gang was informed of certain storm damage to signal wires and pole lines at a point some 40 miles east of Delphi. He was instructed to take four signalmen and three signal helpers and proceed at once to the location of the storm damage. At this time Claimants were engaged in installing underground cable in an open trench about a quarter of a mile from the work site. The storm damage work performed by the Foreman and crew resulted in overtime in addition to straight time earnings.

The Employees contend that Carrier violated the seniority rules of the Agreement when it used signal helpers junior to Claimants to perform the aforesaid storm damage work.

The Carrier raised two procedural objections to the Board's consideration of the claim. First, it contends the claim was not handled on the property in accordance with Section 2, Second, of the Railway Labor Act because no conference was held on the property. The record shows that neither party requested such conference. Under the Board's holding in our recent Awards 10675, 10950 and 12853 neither party may properly raise that issue now. Accordingly, the objection is overruled.

Carrier's second objection is that the claim was not appealed within the 60-day period of the time limit on claims rule effective on this property. That issue also was not raised on the property and it, too, must be held to have been waived. Accordingly, the objection is overruled.

On the merits the Board finds no rule support for this claim. Article 4 of the Agreement, entitled "Seniority", sets out in detail the rights of covered employes based on relative length of service but contains no requirement, express or implied, that the relative seniority standings of employes must be determined and observed in selecting some of them to perform work in an emergency. Nor does this Agreement provide a preference to overtime work based upon seniority.

The Employees reliance on Award 4531 is misplaced. There the Board, in sustaining the claim said that while there were no specific rules applicable to the facts, ". . . seniority is of the essence of collective agreements and should be properly safeguarded so that employes obtain the full benefits thereof." But in its conclusive finding, the Board had this to say: "We find that Claimants had the senior right to this work and, being available and the work not being of an emergency character, should have been called." That an emergency did exist in the case before the Board is not disputed. Therefore, Award 4531 obviously is not in point. (Emphasis ours.)

In view of the foregoing, the claim will be denied.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1964.

#### DISSENT TO AWARD 13023 DOCKET SG-11432

The Majority, consisting of the Referee and the Carrier Members, very properly rejected the Carrier's attempt to have this dispute dismissed on procedural grounds. Considering the unprecedented backlog of undecided cases, it is unfortunate that the Third Division must take the time to deal with the conference issue where as here the issue was so obviously injected for the sole purpose of diverting attention from the real issue.

With regard to the merits, it has long been recognized even before the National Railroad Adjustment Board came into existence that the principle of applying seniority in service, which guarantees to senior employes the right of preference in employment when other conditions of fitness and ability are equal, is not only a matter of justice in the dealings between the carrier and employes but is as well an important factor in the shaping and ratification of the agreements between the parties. In light of which the Majority's holding that Claimant cannot prevail because the Agreement does not contain a specific rule permitting him to use his seniority to obtain the type of position involved, is completely unrealistic. The better view is that expressed in Fourth Division Award 1390 that:

“ \* \* \* If the employe possesses the requisite seniority and if the position is available no express language is required to entitle him to take it. Stated conversely, the employe with seniority will not be denied the right to exercise it, unless the positive and unequivocal language of the Agreement so requires.”

The Majority's effort to get around Award 4531 by implying that Claimants were not available for emergency work is highly illusory in face of the admitted fact that Claimants were working approximately one-quarter mile, about two city blocks, away from the rest of the gang.

/s/ G. Orndorff  
Labor Member