



Award No. 17227

Docket No. SG-18047

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(SUPPLEMENTAL)**

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 38(b), when on January 28 and 29, 1967, it failed to call Leading Signal Maintainer C. E. Jones to work at Tower B-12 in Franklin Park, Chicago Terminals, and used instead a junior employe from 6:00 A.M. to 12:00 P.M. (midnight) January 28 and from 11:00 A.M. to 10:00 P.M. January 29, during all of which time Mr. Jones was at home and available for call. The Carrier should be required now to pay Mr. C. E. Jones twenty-seven (27) hours at the time and one-half rate and two (2) hours at the double-time rate. (Carrier's File: F-1051.)

(b) Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 38(b), when on January 30, 1967, it failed to call signal Maintainer J. O. Nerison to work at Tower B-12 in Franklin Park, Chicago Terminals, and used instead a junior employe from 4:00 P.M. to 12:00 P.M. (midnight) during all of which time Mr. Nerison was at home and available for call. The Carrier should be required now to pay Mr. J. O. Nerison eight (8) hours at the time and one-half rate. (Carrier's File: F-1051-1.)

(c) Carrier violated the current Signalmen's Agreement, as amended, particularly Article V of the August 21, 1954 Agreement, insofar and inasmuch as Signal Supervisor L. B. Sandstrom failed, within the sixty (60) day period provided, to notify Local Chairman L. T. Davies that both the above claims, which were initiated on March 13, 1967, and received by the Supervisor on March 14, 1967, via Certified Mail, were disallowed. Accordingly, Carrier must now allow Claimant Jones twenty-seven (27) hours' time and one-half and two (2) hours' double-time pay and Claimant Nerison eight (8) hours' time and one-half pay.

EMPLOYEES' STATEMENT OF FACTS: Leading Signal Maintainer C. E. Jones and Signal Maintainer J. O. Nerison, Claimants herein were assigned to the Chicago Terminals on the dates of the instant claim.

On Saturday, and Sunday January 28 and 29, 1967, off days for Claimant Jones, Mr. E. F. Elzy, an employe from another territory was called

called Claimant Jones at his residence but received no answer. Claimant Jones continued to be considered as registered absent and thus not available for service.

As stated, Claimant J. O. Nerison was assigned to Tower A-5 which locates some seven miles east of Tower B-12 where Employee Elzy worked on January 30, 1967. Inasmuch as Claimant Nerison was not released from duty until 4:00 P.M. on January 30, 1967 some seven miles east of where Employee Elzy was working, Claimant Nerison was not available for, indeed, could not be available for the service required of and performed by Employee Elzy as of 4:00 P.M., the clock time hour the overtime service commenced and was required at Tower B-12.

In view thereof, neither claimant was available to perform the service for which they are requesting compensation. Accordingly, in contrast to the employees' contentions, there did not occur any violation of any schedule rule and/or agreement on January 28, 29 and 30, 1967 insofar as concerns the use of Employee E. E. Elzy and the employees' contentions and/or claims to the contrary must be dismissed and/or denied in their entirety.

Attached hereto as Carrier's Exhibits are copies of the following letters:

From Mr. L. B. Sandstrom, Supervisor, Signals and Communications to Mr. L. T. Davies, Local Chairman dated April 24, 1967, "B."

From Mr. Sandstrom to Mr. Davies dated August 7, 1967, "C."

From Mr. Donald Wylie, Assistant Chief Engineer-Signals and Communications to Mr. D. E. Twitchell, General Chairman, dated August 7, 1967, "D."

From Mr. S. W. Amour, Vice President-Labor Relations to Mr. Twitchell dated November 9, 1967, "E."

From Mr. Amour to Mr. Twitchell dated April 22, 1968, "F."

From Mr. Sandstrom to Mr. Davies dated April 24, 1967, "G."

From Mr. Sandstrom to Mr. Davies dated August 7, 1967, "H."

From Mr. Wylie to Mr. Twitchell dated August 8, 1967, "I."

From Mr. Amour to Mr. Twitchell dated November 9, 1967, "J."

From Mr. Amour to Mr. Twitchell dated July 2, 1968, "K."

(Exhibits not reproduced.)

OPINION OF BOARD: In the handling of the claims on the property and in its submission to this Board the Petitioner alleged that the Carrier violated Article V of the August 21, 1954, Agreement because the Supervisor of Signals and Communications did not deny the claims filed by the Local Chairman within sixty days, as required by Section 1(a) of that Agreement.

The record shows that the claims in behalf of the Claimants were submitted by the Local Chairman in letters to the Supervisor of Signals

“Under the controlling language of Article V, Section 1 (a), Carrier is required to allow the claim as presented without consideration of the merits but this shall not constitute a precedent or waiver of the contentions of the Carrier on the merits as to other similar cases or grievances.”

The Board adopts the same reasoning herein, and the claim will be sustained on the basis that the Carrier violated Article V of the Agreement of August 21, 1954. We do not pass upon the merits of the dispute.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1969.