



Award No. 18870
Docket No. SG-19033

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Frauden, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
PENN CENTRAL TRANSPORTATION COMPANY
NORTHEASTERN REGION**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Boston and Albany Railroad (New York Central Railroad Co., Lessee) on behalf of:

Mr. J. Angell, Signal Maintainer on Section #3 at East Brookfield Massachusetts, for all hours worked by R. F. Higgins, Leading Signal Maintainer on Section #2, Worcester, Massachusetts, on Sunday June 15, 1969 at Signal 71.42, a Signal on Section #3. The time claimed will be at overtime rate.

[Carrier's File: 114-B SG 69.12]

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties to this dispute bearing an effective date of April 1, 1952, as amended, which is by reference made a part of the record in this dispute.

Claimant J. Angell is regularly assigned as Signal Maintainer on Carrier's Signal Section #3 with headquarters at East Brookfield, Massachusetts.

It has been past practice to call the signal maintainer for trouble on his assigned territory.

On Sunday night, June 15, 1969, trouble was reported in Carrier's signal system, involving Signal 71.42 which is located on the assigned territory of Signal Maintainer J. Angell, the claimant. Leading Signal Maintainer R. F. Higgins, who is regularly assigned to Carrier's Signal Section #2, was called to clear the trouble. The trouble did not involve any signal facilities on Higgins' assigned territory.

Claimant Angell was available but not called for service on his assigned territory.

Carrier asserts that Dispatcher Woodbury tried to contact Mr. Angell, but offered no proof of its assertion.

Claimant Angell contends his telephone was working during the time in question and offers as proof an affidavit to that effect—Brotherhood's Exhibit No. 9.

Leading Signal Maintainer Higgins was clearing trouble on his assigned territory at the time he was directed to clear the trouble on Claimant's territory.

A claim was instituted by the General Chairman under date of June 30, 1969, in behalf of the Claimant for all hours worked on the complained-of trouble by Leading Signal Maintainer R. F. Higgins.

The claim was handled in the usual and proper manner by the Brotherhood on the property, up to and including the highest officer of the Carrier designed to handle such disputes, without receiving a satisfactory settlement.

Pertinent correspondence exchanged on the property has been reproduced and is attached hereto, identified as Brotherhood's Exhibit Nos. 1 through 10.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: There is on file with this Division an agreement governing rules and rates of pay applicable to employes represented by the Brotherhood of Railroad Signalmen on the Springfield Division of the Northeastern Region of the Penn Central Transportation Company, effective April 1, 1952, which by this reference, is made a part of Carrier's submission.

On Sunday, June 15, 1970, Claimant Signal Maintainer was called via telephone by the Dispatcher to perform service at Signal 71.42, on Section #3. The telephone was not answered. The Dispatcher had previously attempted to contact another employe, Mr. Fegrus, without success. The Dispatcher, when Claimant could not be reached, proceeded to contact another employe, R. F. Higgins, to perform this service.

On June 30, 1969, a claim was filed in behalf of Claimant by the Organization for the hours worked by R. F. Higgins at the overtime rate. The claim was based on the premise that the Claimant had preference over R. F. Higgins and that he should have been used to perform the work.

The claim has been properly denied and progressed on the property in the usual manner in accordance with the grievance procedure in applicable agreement provisions up to and including the Superintendent, Labor Relations and Personnel (now Superintendent, Labor Relations), who is the highest appeals officer on this Region of the Company designated to handle claims for compensation alleged to be due. Failing to reach a mutually satisfactory settlement, the claim in this case has been submitted to this Board for final adjudication.

OPINION OF BOARD: This is a claim based on the alleged failure of Carrier to call Claimant to clear trouble on Claimant's assigned territory. Another employe assigned to a different territory was called. The Carrier alleges that it attempted to contact Claimant by phone but that his phone was out of order.

The evidence in the case is sparse. There is in the record an affidavit from Claimant stating that his phone was working at the time in question. Carrier has submitted no evidence to the effect that the call was actually made. There is set out in a letter the allegation that a third party, one Woodbury, attempted to make the call.

On balance the facts favor the Claimant. The Carrier has not met its burden of overcoming the Claimant's evidence.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December 1971.