

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30785
Docket No. SG-30855
95-3-92-3-708

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

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

STATEMENT OF CLAIM:

"Claims on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

Claim No. 1

- (A) Claim on behalf of William T. Erody, on account Carrier violated the Signalmen's Agreement, particularly Rules 5-A-2(a) and 5-A-2(b), when it assigned overtime work to a junior employee on March 1, 1991, without first offering the work opportunity to Claimant. Carrier also violated Rule 4-K-1(b), when Carrier's Manager of Labor Relations failed to deny the claim.
- (B) Carrier should now pay the Claim, as presented, for ten (10) hours lost work opportunity, at the Signalmen's rate of pay.

Claim No. 2

- (A) Claim on behalf of William T. Erody, on account Carrier violated the Signalmen's Agreement, particularly Rules 5-A-2(a), when it assigned overtime work to a junior employee on March 8, 1991, without first offering the work opportunity to Claimant. Carrier also violated Rule 4-K-1(b), when Carrier's Manager Labor Relations failed to deny claim.
- (B) Carrier should now pay the claim, as presented, for ten (10) hours lost work opportunity, at the Signalmen's rate of pay.

Claim No. 3

- (A) Claim on behalf of William T. Erody, on account Carrier violated the Signalmen's Agreement, particularly Rules 5-A-2(a) and 5-A-2(b), when it assigned overtime work to a junior employee on December 15, 1990 and December 16, 1990, without first offering the work opportunity to Claimant. Carrier also violated Rule 4-K-1(b), when Carrier's Manager of Labor Relations failed to deny claim.
- (B) Carrier should now pay the Claim, as presented, for twenty (20) hours lost work opportunity, at the Signalmen's rate of pay."

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 waived right of appearance at hearing thereon.

The Claimant is a Signalman on Carrier's Fiber Optic Cable (FOC) gang, headquartered at North Bergen, New Jersey, working as such when this dispute arose. The regular assignment for Claimant's position was ten (10) hours per day, Monday through Thursday, with rest days of Friday, Saturday and Sunday.

On Saturday, December 15 and Sunday, December 16, 1990, AT&T was performing work in the territory covered by Claimant's FOC gang. The project involved placing signs above the fiber optic cables. A signal foreman and a signalman, both represented by the Brotherhood of Railroad Signalmen (BRS), and a communications worker, represented by the International Brotherhood of Electric Workers (IBEW), assisted on the project.

On February 4, 1991, the Local Chairman submitted a claim on Mr. Erody's behalf, alleging that Carrier had violated Rule 5-A-2 when it allowed a communications employee "to improperly perform signal work" while assisting AT&T on the project. Carrier denied the claim on March 20, 1991, asserting that the communications worker "did not perform any work with signal equipment, but located communications cable and acted as a watchman for employees of an outside company." In the meantime, Carrier informed members of the FOC gang that their positions were to be abolished effective February 28, 1991, but those abolishments were ultimately rescinded.

On Thursday, February 28, both the Claimant and a junior member of the FOC gang, worked on a project on the Raritan Industrial Track. Claimant marked off two (2) hours early, working eight (8) hours. Meanwhile, the junior employee worked two (2) hours overtime, a total of twelve (12) hours, on the Raritan project. At the end of the 12 hours, Carrier determined that the project would have to be completed the following day, Saturday, March 1, 1991. The overtime was offered to the junior employee, which he accepted.

On March 13, 1991 the Organization submitted a second claim alleging that Carrier had again violated Rule 5-A-2 by "granting overtime to a member of the Fiber Optic Gang who was junior to Claimant." Carrier denied the claim asserting that Claimant "did not work on the Raritan Industrial Track at all on February 28, and also marked off early" on the 28th.

Finally, on Thursday, March 7, 1991, Claimant was again working at the Raritan Industrial Track. The Assistant Foreman of the FOC gang, was working on the Northern Territory, approximately thirty (30) miles away from Raritan, on the same day. Overtime was required the following day, March 8, on the Northern Territory Project. The Foreman worked overtime on that date. In additional correspondence dated March 13, the Organization submitted a third claim alleging violations of the Classification Rule and Rule 5-A-2 due to Carrier's use of the Foreman for overtime. Carrier likewise denied that claim, maintaining that Claimant was "not working on that job location on the days in question." Carrier went on to state that:

"The second part of your claim does not apply because the work assignments for that day required four (4) men to protect contractors and three (3) men to do manual work. The three (3) youngest signalmen were assigned to do the manual work. The two (2) Assistant Foremen who are qualified watchmen were assigned to protect the contractor with a signalman there to affect repairs if necessary."

Carrier's denial of the three claims was appealed in a letter dated April 23, 1991. The time limit for Carrier's response expired on June 23, 1991 with no response received by the Organization. By letter dated July 8, 1991, the Organization notified Carrier of the "time limit violation" due to Carrier's failure to respond to the April 23 letter, and requested payment of the claims as presented. The three claims were discussed in conference on October 8, 1991, and Carrier continued to deny the claims. With regard to the time limit violation, Carrier asserted that denials were sent and postmarked June 22, 1991 and provided an unsworn statement from a secretary that she had posted them by regular mail. It is noted that the claim was submitted to Carrier via Certified mail, return receipt requested. Carrier responded by a different channel of communications at its peril and has failed to carry the burden of showing a timely denial. See Third Division Award 28182 and Second Division Award 11927. Carrier's failure to comply with applicable procedural time limits, set forth in Rule 4-K-1(b) of the Agreement, triggered the provision in that Rule establishing that when such notice is not provided, "the claim will be allowed as presented." Based upon the foregoing, these claims must be sustained. (The IBEW appeared as a Third Party at Interest in the Board proceedings to present its views on the merits of the case. Since the case was decided on the basis of the time limits, no comment regarding the merits is necessary or appropriate.)

AWARD

Claims sustained.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 6th day of April 1995.