

Award No. 3186

Docket No. SG-3230

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Sidney St. F. Thaxter, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM:

(a) Claim that the Carrier violated the current Signalmen's Agreement when it failed to specify the regularly assigned working hours of the position of Foreman of Maintainers on bulletin advertising such position at Binghamton, N. Y., on July 24, 1944.

(b) Claim that the Carrier violated the current Signalmen's Agreement when it specified on bulletin referred to in paragraph (a) that the position advertised was "Permanent—Pending return of former incumbent who is temporarily serving in an official capacity."

EMPLOYEES' STATEMENT OF FACTS: The position of Foreman of Maintainers is a position covered by the Current Signalmen's Agreement in Rule 1. For ready reference Rule 1 is here quoted:

"An employee who is assigned to the duties of supervising a group of signal maintainers on a seniority district or subdivision thereof and who is not regularly required to perform any of the work over which he has supervision shall be classified as a foreman of maintainers.

NOTE: Foreman of maintainers may be required to perform with the assistance of a signalman or signal maintainer field tests of apparatus and equipment."

Under date of July 24, 1944 the Carrier bulletined a position of Foreman of Maintainers and failed to specify the hours of service. The bulletin in question is reproduced herewith:

"ERIE RAILROAD COMPANY

Cleveland, Ohio. July 24, 1944

B U L L E T I N

TO EMPLOYEES CONCERNED:

Applications for the following position will be received in accordance with Signal Department Employees agreement.

We are at a loss to understand just what the Board can decide. These foremen do not have regularly scheduled hours. Generally, they report in advance of their men and work after the men have finished, making records, time slips, reports, etc. Any hours shown on a bulletin would naturally have to include sufficient time to take care of these matters in order to prevent penalty claims at future times. In the case of the Foreman of Maintainers, such as is involved in this claim, he is generally working on his own and covers a territory. Actually he is working in a supervisory capacity and it is not possible to satisfactorily show an 8 hour assignment such as is contemplated by Rule 8 which is being cited by the employees for this type of a position.

To demonstrate that the negotiating committee fully understood that assigned hours per day, as contemplated by Rule 8, was not contemplated in the case of Foremen of Maintainers, Signal Gang Foremen and Meadville Signal Shop Foreman, the committee requested that the management give them a letter that would state the comprehended hours in the monthly rate that was in effect on such positions, inasmuch as the comprehended hours were not indicated in the rates of pay or in any of the rules that had been concluded effective June 1, 1944.

Thereafter, on the basis that in assigning comprehended hours there would be no claims for extra pay, the following letter agreement was issued:

"Cleveland, Ohio, June 5, 1944.

"Mr. W. D. Wilson, General Chairman,
B.R.S. of A.—Erie System,
8 Andrew Place,
Fair Lawn, N. J.

Dear Sir:

It is understood and agreed that foremen of maintainers, signal gang foremen and Meadville signal shop foreman and their rates of pay are included in and considered a part of the agreement covering Rules and Rates of Pay for Signal Department Employees, effective June 1, 1944. Foremen of Maintainers shall receive a rate of pay of \$290.40 per month, except the formen of maintainers at Jersey City, N. J., who shall receive a rate of pay of \$300.40 per month, which rates will comprehend 3060 hours per year. Signal Gang Foremen shall receive a rate of pay of \$255.40 per month, which rate will comprehend 3060 hours per year. Meadville signal shop formen shall receive a rate of pay of \$276.40, which rate will comprehend 2920 hours per year.

It is also understood and agreed that this does not guarantee any stated number of positions at the rates of pay listed.

Very truly yours,

(Sgd) I. H. Schram,
Chief Engineer M. of W."

CC—Mr. A. E. Lyon, Grand President,
B.R.S. of A.,
4849 N. Western Ave.,
Chicago, Illinois."

There is no merit to the claim as submitted to the Third Division of the National Railroad Adjustment Board and it should be declined.

OPINION OF BOARD: The Brotherhood of Railroad Signalmen is here seeking to force the carrier to comply with what they contend is the proper

form for bulletining the position of Foreman of Maintainers. The claim looks only to the future and does not seek compensation for any past violation. The form of the bulletin is erroneous, it is alleged, in two respects, in that, according to claim (a), it does not, as required by Rule 58, set forth the hours of service; and that, according to claim (b), it designates the position not as either "Permanent or Temporary" as required by Rule 58 but as "Permanent—Pending return of former incumbent who is temporarily serving in an official capacity." We shall consider these two claims in their order.

Claim A

Foremen of maintainers were brought under the scope of the current agreement dated June 1, 1944 and became subject to its terms. In only one respect (see Rule 51) are they specifically excepted. But that does not mean that they are subject to provisions clearly inapplicable to them.

An agreement must be interpreted as a whole; conflicting provisions must be reconciled; and that construction placed on it which will carry out the intent of the parties. The language must be construed in such manner as to reach a reasonable result in the light of the problem we have before us. It is the spirit rather than the letter which governs.

Rule 7 places foremen of maintainers on a monthly pay basis and specifically provides that there shall be no additional pay for "overtime or nights, holidays or Sundays." The carrier maintains that under this provision there is no limit on the number of hours that such foremen may be worked with no additional pay. The representatives of the employees concede that this is so. They admit it in their submission, and in their brief, and in their oral argument. Nevertheless they insist that, in accordance with Rule 8, the provisions of the eight hour day are applicable to them and that they are entitled to have a time designated for starting work between the hours of 6 A.M. and 8 A.M. The failure to designate the hours of the work period and the starting time on the bulletin for such position is, they claim, a violation of Rule 58. The bulletin is for the information of those who may wish to bid for the position. Why should it contain misinformation on this important subject just because a literal reading of Rule 58 would seem so to require? No. Rule 58 must be read in connection with Rule 7 and reconciled with it. When we do so, it is apparent that the provision in the form of bulletin, as set forth in Rule 58 relative to hours of service, has no application to this position. It will only cause confusion for the carrier to set down requirements with respect to hours of service which both sides admit the carrier is not bound to respect. That such a procedure will really be disruptive of the agreement is evident from the employees' own submission. Though maintaining in one breath that the carrier is free to work foremen as it wishes without extra pay, and that the only limit is that imposed by the physical endurance of the men, the employees later on make the following claim:

"It is an unfair assumption, as well as a violation of the agreement, on the part of the Carrier to impose different working hours on foremen than that which is required of other Employees."

These two utterly contradictory stands are the inevitable result of trying to reconcile what cannot be reconciled.

The carrier was in our opinion interpreting the agreement correctly when it omitted to include the hours of service in the bulletin of this position. Claim (a) should be denied.

Claim B

We may concede that bulletining this position as, "Permanent—Pending return of former incumbent who is temporarily serving in an official capacity," was not a compliance with Rule 58. The claim seeks no compensation for past violations, but only a correction of such practice for the future. The carrier alleges in its submission that it has now changed its practice in this respect and that positions are now "bulletined either premanent or temporary without

the additional phrase that was added in the bulletin of July 24, 1944" . . . Under these circumstances we can see no reason why this Board should sustain this claim and order the carrier to do what it concedes it will do of its own accord. In order that the employees may not be precluded by our action if there should be further violations, the claim should be dismissed without prejudice.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing thereon;

That the carrier and the employees involved in this dispute are respectively carrier and employees 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 no basis for an affirmative award exists.

AWARD

Claim (a) denied.

Claim (b) dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of May, 1946.