

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
OF AMERICA

THE CENTRAL RAILROAD COMPANY
OF NEW JERSEY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on The Central Railroad of New Jersey:

(a) That the agreement was violated by the Carrier during the period between March 1 and October 1, 1950, when it improperly classified and worked William Linden as a Leading Signalman.

(b) That William Linden be paid the difference between what he was compensated at the Leading Signalman's rate of pay and the Foreman's rate of pay during the period stated in part (a) of this claim.

EMPLOYEES' STATEMENT OF FACTS: At various times and on numerous occasions between March 1 and October 1, 1950, Leading Signalman William Linden worked in the vicinity of Jersey City, N. J., without the benefit and direction of a Foreman within the meaning and intent of Rule 4, first paragraph.

For example, between May 2 and 16, 1950, the claimant's Foreman was located at Tower "C" and the claimant was located at Tower "A," which are approximately one mile apart, and all during this period no physical or personal contact was made by the Foreman and the claimant.

During the handling of this case on the property, the Carrier conceded that "there were days on which the claimant was assigned to work at a different location than that at which the foreman states the performed service," and that "the longest consecutive number of days that this condition existed was for eleven days, May 2 to May 16."

* * * *

Rule 4, first paragraph, defines a Leading Signalman as a Signalman under the direction of a Foreman working with and supervising the work of one or more Signalmen.

* * * *

Contrary to general practice as well as the provisions of the Signalmen's Agreement, the Carrier required the claimant, while being paid as a Leading

Not only is this claim without merit under the rules but, also it should be dismissed for laches. As stated above, this claim was finally denied October 3, 1950. On January 29, 1953, some nine and one-half months after the death of this particular Foreman, and some 27 months after the case had been denied, the Brotherhood of Railroad Signalmen of America serve notice upon this company that they are now progressing this claim to the Third Division, National Railroad Adjustment Board.

For the reasons stated above Carrier contends that the claim as presented should, in its entirety, be denied on the grounds that no rule has been violated, or dismissed on the ground that the Carrier has been placed in a position where, because of the death of the Foreman involved, Carrier will not have the opportunity to meet statements which may be made now by claimant.

The Carrier affirmatively states all data contained herein has been presented to the employe representative.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant claims the Carrier violated Rules 2 and 4 of the Agreement when on the dates specified he and his Foreman worked at places several miles apart and there was no "personal contact (on the part of the Foreman) with the Leading Signalman at least once or twice a day so as to make his supervision over, and direction of, the Leading Signalman a matter of fact," or as he states it alternatively "A Signal Foreman cannot exercise supervision over signal work and a Leading Signalman by 'remote control,' nor can a Leading Signalman be under the direction of a Signal Foreman by 'remote control.'"

It appears to us that what Claimant is arguing there is that Rule 4 requires that the Leading Signalman work with the Foreman in more or less constant physical proximity. If that were true, there would be no need for the classification of Leading Signalman "working with and supervising the work of one or more signalmen." After all, he is in a supervisory position himself and if he had to be receiving personal direction of the foreman every day, he would be a poor supervisor.

This question of physical proximity for purposes of direction appears to be a somewhat novel one because none of the Awards cited are particularly helpful in that regard with the possible exception of Award 5830, wherein the following language was used, "We do not agree that conceptually the term 'immediate supervision' requires a foreman and his assistant on these sections to work in geographic adjacency in the sense stressed by the Organization." We concede that the rules involved are not the same, but a "leading Signalman" in Rule 4 can well be described as an assistant foreman within the meaning of that quotation.

On the days that the Foreman was gone "on vacation," or "off," Claimant filled the position of Foreman and was paid accordingly.

There is no showing in this record that Claimant's work as a Leading Signalman was in any way deferred, hampered or interfered with because of any alleged failure of "direction" or "supervision" on the part of the Foreman.

The construction of the rules requested by the Organization is too strained to form the basis for the claim, and it should be denied.

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 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 Carrier did not violate any of the rules of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of April, 1954.