

Award No. 10008
Docket No. SG-9479

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Louisville and Nashville Railroad Company, in behalf of Signalman C. E. Lennon, for an equal amount of time equivalent to that required by Assistant Signal Foreman R. W. Pulley to drive a company-owned truck loaded with signal material from Bowling Green, Kentucky, to the Cumberland Valley Division on January 2, 1956, at his own rate of pay on the overtime basis.

BROTHERHOOD'S STATEMENT OF FACTS: This Carrier's System Signal Construction Forces are made up of six large Signal Gangs, five of which are commonly known as Line of Road Signal Gangs assigned to and with headquarters at the Signal Gang camp cars. The other Signal Gang is commonly known as the Signal Store Room Gang, assigned to and with headquarters at the Signal Store Room, Bowling Green, Kentucky.

All of this Carrier's System Signal Construction Gangs, including the Signal Store Room Gang, are assigned trucks to transport tools, equipment, material and signal employees from the various points and places where needed on this Carrier's property.

The trucks assigned to the Signal Department and the System Construction Gangs are used and driven exclusively by signal employees, other than Foremen and Assistant Foremen, and driving such trucks is considered signal work to be performed solely by signal employees. At no time are the trucks driven by employees of other Departments or Crafts when hauling signal equipment, material, employees, etc.

The claimant, C. E. Lennon, is regularly assigned as Signalman in this Carrier's System Signal Construction Gang, which is known as the Signal Store Room Gang, with common headquarters at the Signal Store Room, Bowling Green, Kentucky.

Claimant Lennon resides at 522 Eighth Street, Bowling Green, Kentucky, and on January 2, 1956, was available for call and desired to perform the signal work embraced in this claim. He was the senior employee available for such work and, being a member of the Signal Shop Gang, was entitled to the overtime work assigned to Assistant Foreman Pulley.

Rule 1, SCOPE, reads:

"This agreement covers the rates of pay, hours of service and working conditions of all employes, classified herein, engaged in the construction, installation, repair, inspecting, testing and maintenance of all interlocking systems and devices; signals and signaling systems; wayside devices and equipment for train stop and train controls; car retarders and car retarder systems; power operated gate mechanism; automatic or other devices used for protection of highway crossings; spring switch mechanism; electric switch targets together with wires and cables; train order signals in signaled territory and elsewhere within the limits of a signal maintainer's territory; power or other lines, with poles, fixtures, conduit systems, transformers, arresters and wires or cables pertaining to interlocking and signaling systems; interlocking and signal lighting; storage battery plants with charging outfits and switch board equipment; sub-stations, current generating and compressed air plants, exclusively used by the Signal Department, pipe lines and connections used for Signal Department purposes; carpenter, concrete and form work in connection with signal and interlocking systems (except that required in buildings, towers and signal bridges); together with all appurtenances pertaining to the above named systems and devices, as well as any other work generally recognized as signal work."

There is nothing in either rule specifically referring to the use of trucks as being work reserved exclusively to signalmen. And certainly it cannot be successfully argued that the transporting of signal material from where it is stored to point where it is delivered to signalmen for use in the performance of their work, or that the transporting of a truck from one location to another, is generally recognized as signal work.

CONCLUSION: There is no basis for an affirmative award, under the agreement or otherwise, and claim of the employes should be denied.

All relevant data in support of the position of the carrier has been submitted to the duly authorized representatives of the employes.

OPINION OF BOARD: Claimant here held a regular assignment as Signalman, attached to the Signal Store Room Gang, with headquarters at Bowling Green, Kentucky. On January 2, 1956, a holiday, and so recognized by the parties hereto, Assistant Foreman R. W. Pulley, drove a truck containing some signal equipment from Bowling Green to the C. V. Division and to be used on that Division. For such service performed by the Assistant Foreman, Claimant is making claim for compensation for an equal amount of time, at the time and one-half rate, for the time consumed by the Assistant Foreman in driving the truck to the Cumberland Valley Division, all to be considered at the Claimant's rate of pay assigned.

The Organization contends Claimant was the senior available employe and was deprived of the service of driving the truck by the Assistant Foreman, such acts by Carrier constitutes a violation of Rule 17 (d), Rule 7 and Rule 60, all a part of the effective Agreement between the parties.

Carrier for its position contends that there is nothing contained in the record before us to show that there was any necessity for the work to be performed on January 2nd, a holiday, that no signal work was performed on such day, and that such work as performed here does not constitute work to

be performed by Signalmen only to the exclusion of other employes of the same craft. Carrier contends, and it is not disputed by the Organization, that the truck was to be used on C. V. Division on the day following the holiday, and since some of the employes being in Bowling Green during the holiday, Carrier made the truck available to such employes to use for their own convenience in going to their assignment the following day. The record does not show that Carrier required any designated employee to be assigned to deliver the truck to C. V. Division, and no obligation existed on the part of Carrier to pay any employee for such service on the holiday involved.

From a review of the record before us, we are of the opinion that the evidence here does not support the contentions of the Organization. Nothing is contained that gives the exclusive right to Signalmen to drive trucks as alleged here, and we find nothing before us to support the contention that such work is exclusive to Signalmen.

This Division in numerous awards has held that the Board has no authority to change the rules of any agreement, by adding to or detracting from the rules as negotiated by the parties, where such language is clear and not ambiguous. Rule 17 (d) is not applicable here since there is nothing in the record before us to show that any employes were called to perform work as alleged. The employes were in no way obliged or required to deliver the truck to C. V. Division and no compensation was paid the Assistant Foreman, either at his regular rate of pay or the overtime rate.

The record does not support a sustaining award.

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 Employee involved in this dispute are respectively Carrier and Employee 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 the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 21st day of July 1961.

Dissent to Award 10008, Docket SG-9479

The record was adequate to prove that service was performed on January 2, 1956. The record also adequately disclosed that the service performed was of a type not ordinarily performed by an Assistant Signal Foreman. The fact that the Assistant Signal Foreman volunteered to perform the service without pay should not have been permitted to stand in the way of allowance of the claim.

Award 10008 does not interpret the Agreement in the light of the facts; therefore, I dissent.

(s) G. Orndorff
G. Orndorff
Labor Member