

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Frank J. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
CLINCHFIELD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Clinchfield Railroad that:

(a) The position of S.C.&E. Maintainer, Extra Gang #1 (G. A. Dover), as advertised on Bulletin No. 755 is in violation of Rule 5 of the current Signalmen's Agreement.

(b) The Carrier properly advertised the position in accordance with Rule 3 of the current agreement and that the successful applicant when sent to work away from Signal Gang be allowed necessary expenses in line with Rule 26 of the current agreement.

BROTHERHOOD'S STATEMENT OF FACTS: Under date of May 12, 1955, Bulletin No. 755 was issued to all employees advertising the position of S.C.&E. Maintainer with headquarters at Extra Gang #1 (G. A. Dover), with assigned work days Monday through Friday; assigned hours, 7:30 A. M. to 4:30 P. M.; meal period 1 hour; the assigned territory, Extra Gang #1 system; duration permanent; brief description of duties, bonding, relocating bootlegs, and other duties covered under the heading of "Scope".

The General Committee has progressed this claim in the usual manner on the property and has failed to secure a satisfactory settlement from the highest officer designated to handle disputes.

There is an agreement between the parties bearing effective date of July 1, 1950, and it is by reference made a part of the record in this dispute.

POSITION OF THE BROTHERHOOD: It is the position of the Brotherhood that the Carrier violated the agreement when it improperly advertised the position on Bulletin No. 755 as S.C.&E. Maintainer instead of Leading S.C.&E. Man. Rule 5 of the current agreement reads as follows:

"SC&E Maintainer: An employee assigned to a section or plant performing generally recognized maintenance work."

OPINION OF BOARD: On May 12, 1955 Carrier issued Bulletin No. 755 advertising the position of S.C.&E. Maintainer with Headquarters at Extra Gang #1. On April 30, 1956 the Organization instituted a claim on the ground that this position was improperly bulletined as an S.C.&E. Maintainer under Rule 5 of the Agreement when it should have been bulletined as a Leading S.C.&E. Maintainer under Rule 3 of the Agreement. The Carrier denied the claim on the ground the work was maintenance work and hence properly classified under Rule 5. The essence of the claim is that the position was improperly classified.

The Carrier raises two procedural issues: (1) the claim was not filed on time, (2) the Organization did not file the claim on behalf of a specific named employee. The Organization urges that inasmuch as the Carrier did not claim the sixty day rule for filing claims on the property it has waived it before the Board, and, in any event, the erroneous classification of the job under Rule 5 is a continuing violation and thus the sixty day rule need not be observed.

The Board does not pass on the question whether the sixty day rule was properly invoked by the Carrier. Here the basis of the claim is an alleged erroneous classification of a position which continues until the classification is corrected. In Second Division Award 3594 it was held:

"The fundamental characteristic of a continuing violation is that, as a consequence of an erroneous interpretation or practice adopted by one of the parties, a right guaranteed in a controlling agreement is withheld from the other party, when otherwise it could have been exercised on any of successive days during the period of the violation."

In the instant case if it is true, as alleged, that the Carrier improperly classified the position under Rule 5 instead of Rule 3 a right is withheld from the organization which it otherwise could have exercised on successive days during the period of the violation. If, as alleged, there is an erroneous classification it continues until the job is properly bulletined. Here the basis of the claim is not the bulletin but the erroneous classification of the position as bulletined which continues until the position is reclassified and then properly bulletined. Therefore, there is an alleged continuing violation of the Agreement and the sixty day rule need not be observed.

With respect to the second procedural point raised by the Carrier this Board held in Award 9248:

"At the outset the Carrier contends we ought to dismiss this claim because it argues, the claim is for an unnamed Claimant and therefore does not meet the requirements of the time limit rule in the Agreement. The time limit rule provides, among other things, that all claims or grievances must be presented in writing by or on behalf of the employee involved, and that the initial claim in this case did not name a particular Claimant. This procedural matter has been raised in a great number of decided cases. Some decisions hold that the claimants must be specifically named, while others hold that the claimants need not be specifically named so long as they are easily and clearly identifiable. We think this latter view more properly effectuates the spirit and intent of collectively bargained agreements as well as the purposes of the Railroad Labor Act, as amended."

Here the claimant could be easily identified and the contention of the Carrier is rejected.

The organization contends that the position in dispute was improperly classified and advertised under Rule 5 of the Agreement. Rule 5 provides:

“Rule 5. S.C.&E. Maintainer. An employee assigned to a section or plant performing generally recognized maintenance.”

The organization complains that the employee was not assigned to a plant or a section but to an Extra Gang that moves from point to point in the System. It is clear that Rule 5 requires an employee to be assigned to a section or plant and that assignment to a gang that moves through the System is not a proper assignment under the Rule.

The Organization also claims that the position should have been scheduled under Rule 3. That Rule provides:

“Rule 3. Leading S.C.&E. Man: An S.C.&E. man, under the directions and instructions of a foreman, working with and directing the work of more than one employee. However, the number of employees so directed shall not exceed a total of four at any time.”

The facts show the occupant of the position in issue does not work under the direction of a signal foreman nor does he direct the work of more than one employee. Thus, this Rule does not apply. Nor does the Organization claim that any other rules of the Agreement are applicable.

Under well settled rules of the Board it cannot make collective bargaining agreements for the parties but is limited to interpretation of existing agreements. The claim as to Part B, therefore, must 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 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.

AWARD

Claim (a) sustained to the extent indicated in the Opinion. Claim (b) is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of September, 1961.