

Award No. 10188

Docket No. SG-9179

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chicago, Rock Island and Pacific Railroad Company that:

(a) The Carrier improperly compensated Signal Maintainer H. H. Sullins with headquarters at Maple Hill, Kansas on August 30 and 31, September 1, 2, 8, 12, and 13, 1955; Signal Maintainer O. Herbie with headquarters at Alma, Kansas, on September 6 and 7, 1955, Signal Maintainer W. J. Peycke with headquarters at Alta Vista, Kansas, on August 10 and 29; September 5, 7, 10, 11 and 12, 1955.

(b) Signal Maintainers H. H. Sullins, O. Herbie and W. J. Peycke be allowed the difference between their rate of pay as Maintainer and that of Testman on the dates specified in part (a), eight (8) hours per day. (Carrier's file L-130-54.)

EMPLOYES' STATEMENT OF FACTS: Since the amendment of the current agreement which added Rule 1, Signal Testman Classification, all inspections and tests of signal relays, to meet the requirements of the Interstate Commerce Commission with respect to Inspections and Tests — All Systems, as required by paragraphs 104, 108, and 112, Rules Standards and Instructions of the Bureau of Safety, I.C.C., have been made by the Signal Testman. Under date of September 27, 1955, Signal Testman C. V. Penrose wrote the claimants, as follows:

"I have been instructed to have you Gentlemen Test your own Relays which are Due, at this time. I believe all of you have test sets. If you need Test Battery or Tags write us at Liberal.

(This) account being tied up with other work for some time."

This letter stated that he (Signal Testman Penrose) had been instructed to have the claimants test their own relays which were due at that time under the I.C.C. Rules, Standards and Instructions.

determining whether employes coming within the scope of this agreement are properly installing or maintaining signal department apparatus, appliances, circuits and appurtenances; **neither is it to be interpreted as restricting testing and inspection by any other qualified signal department employe as part of his regular duties and at his regular rate.** Signal testmen may work together or with signalmen or signal maintainers in connection with their inspections without being considered, or requiring a foreman." (Emphasis ours.)

The emphasized portion of the above quoted rule is clear and unambiguous. It permits Signal Maintainers (or other Signal employes) to test and inspect at their own rate of pay. The Signal Testman is responsible for final reports.

It is the Carrier's position that the Signal Maintainers in the instant claim did not perform any work on the dates in question in violation of the current agreement, hence are not entitled to payment claimed.

The Scope Rule of the agreement defines what is signal work and testing and inspecting is definitely included. The principal duty of the claimants is to maintain the signal equipment on their assigned territory; their principal duties are not just inspecting and testing. They were not relieved of maintenance duties when given instructions to make tests on relays on their territory, but were merely instructed to assist in this work.

Signal Maintainers have performed the work complained of in the instant case for many years.

It cannot be denied that the testing performed is signal work, coming under the scope of agreement. Since the definition of a signal maintainer is shown in the agreement as "an employe assigned to perform work generally recognized as signal work," it should be properly assignable to the maintainer, especially in view of Note in Rule 1 quoted above.

A signal maintainer's duties are to perform work generally recognized as signal work. Proper maintenance automatically calls for both inspection and testing on occasion, in connection with their duties. Inspection and testing are within their duties.

For the above reasons, we respectfully petition the Board to deny the claim in this case.

It is hereby affirmed that all of the foregoing is, in substance known to the organization's representatives.

OPINION OF BOARD: On August 10, 29, 30 and 31, September 1, 2, 5, 6, 7, 8, 10, 11, 12 and 13, 1955, Signal Maintainers O. Herbie, H. H. Sullins and W. J. Peycke tested and inspected relays on their assigned territories. The Carrier contends that this work was performed as a part of their regular duties. Under date of September 27, 1955, Signal Testman C. V. Penrose wrote the Claimants as follows:

"I have been instructed to have you Gentlemen Test your own Relays which are Due, at this time. I believe all of you have test sets. If you need Test Battery or Tags write us at Liberal.

"(This) account being tied up with other work for some time."

Further, on October 10, 1955, Supervisor of Signals J. E. Webb wrote to instruct Claimants as follows:

"Per Mr. Penrose's recent request to you Gentlemen to test your relays.

"Will you please arrange to do so before the end of the year, furnishing SD-4 to Mr. Penrose as requested."

This request was pursuant to I.C.C. Rules, Standards and Instructions of the Bureau of Safety, which requires inspection every two years and a report on the prescribed Forms, SD-4. The record indicates that in 1953 Signal Testman Penrose had performed this work himself and that, prior to the creation of the Signal Testman position, found in Rule 1 of the parties' 1952 Agreement, this type of work had been generally performed by Leadmen. Because of this the present claim was filled on November 1, 1955. The claim is made that, by requiring these Signal Maintainers to perform this testing at their regular rate of pay, Rule 1 and Rule 25 of the Agreement have been violated.

The language of these rules is as follows:

"RULE 1. SIGNAL TESTMAN:

An employe who is regularly assigned to and whose principal duties are the inspection and testing of signal appliances, apparatus, circuits, and appurtenances, but who may perform any Signal Department work, shall be classified as a Signal Testman.

"NOTE: Classification of Signal Testman will not cover positions of Inspectors from the Signal Engineer's office with rank and authority comparable to Assistant Signal Engineer nor include nor restrict inspection and tests made by Signal Supervisors or other officials of the company or manufacturers of equipment for the purpose of determining whether employes coming within the scope of this agreement are properly installing or maintaining signal department apparatus, appliances, circuits and appurtenances; neither is it to be interpreted as restricting testing and inspection by any other qualified signal department employe as a part of his regular duties and at his regular rate. Signal testmen may work together or with signalmen or signal maintainers in connection with their inspections without being considered, or requiring a foreman."

"RULE 25. PRESERVATION OF RATE:

An employe required to fill the place of another employe receiving a higher rate will receive the higher rate for time so assigned, except when an assistant signalman is required to relieve another assistant signalman, he will receive his own rate. An employe required to fill temporarily the place of an employe receiving a lower rate, will not have his rate reduced."

The Carrier denied this claim on the ground that the language of the explanatory note in Rule 1 makes it clear that the establishment of the Signal Testman position is not to be interpreted as "restricting testing and

inspection by any other qualified Signal Department Employee as a part of his regular duties and at his regular rate." (Emphasis added.)

Other subsequent claims involving the same parties, the same language and the same basic problems have been made. One of these involved the same kind of testing and inspection by another Signal Maintainer, M. W. Kiser, during the month of December, 1955. That claim came before this Board in Docket SG-9403, and was denied in Award 10012, July 21, 1961, with Referee Weston sitting as a member of the Board.

It cannot be denied that Signal Maintainers have always tested and inspected signal equipment as a part of their regular duties. The particular assignment here in question was that of testing the Signal Maintainer's "own relays." This indicates that it was done in connection with their other assigned duties. It was not a case of their being removed from their regular assigned territory and duties to fill a vacancy of a Signal Testman. Therefore, we cannot conclude that either Rule 1 or Rule 25 was violated. Award 10012.

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; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November, 1961.

DISSENT TO AWARD 10188, DOCKET SG-9179

After recognizing early in the Opinion of the Board that the work involved was done pursuant to requirements of the I. C. C. Rules, Standards and Instructions and that it is a class of work heretofore performed by Signal Testman Penrose (one of several so classified), and before him by Leadmen, the majority, consisting of the Carrier Members and the Referee, goes on to deny the claim on a fundamentally wrong basis. For example, the majority says in the last paragraph of the Opinion: "It cannot be denied that Signal Maintainers have always tested and inspected signal equipment as a part of their regular duties.", which is true but meaningless here since it falls far short of establishing that the testing and inspecting involved in this dispute was incidental to the regular duties of Claimants in their

capacity as Signal Maintainers. Then the majority says: "The particular assignment here in question was that of testing the Signal Maintainer's 'own relays.' This indicates that it was done in connection with their other assigned duties.", which is in error in that it simply begs the question. Furthermore, the majority's self-serving expression "own relays" is not determinative of the issue because a Signal Testman is never testing his "own relays." On the contrary, the Signal Testman, in the normal course of his performance, is always testing and inspecting relays and equipment for which some maintainer or other employe classified and paid under the Signalmen's Agreement is directly responsible. Therefore, the majority's bald assertion that Claimants were testing their "own relays" does not establish that said testing was being done in connection with and incidental to their duties as Signal Maintainers. The record adequately disclosed without challenge from Carrier that Claimants were doing the class of work that the parties had in mind when they established the Signal Testman classification and rate of pay. Next the majority says: "It was not a case of their being removed from their regular assigned territory and duties to fill a vacancy of a Signal Testman." thus implying that the application of the Preservation of Rate Rule is limited to those employes who are removed from their regular assigned territory and duties to fill a vacancy which implication even a cursory reading of Rule 25 will disclose to be highly erroneous. Early in the Opinion the majority quotes enough from the record to show beyond reasonable doubt that Claimants were directed to perform work which the Signal Testman was not available for "account being tied up with other work for some time." Therefore, Claimants were required to fill the place of a Signal Testman and they were entitled to receive the higher rate while so assigned.

Award 10188, like 10012 relied upon by the majority, does not interpret the rules in light of the facts contained in the record; therefore, I dissent.

/s/ G. Orndorff
Labor Member