

Award No. 10288

Docket No. SG-10253

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Robert J. Wilson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY — COAST LINES**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Atchison, Topeka and Santa Fe Railway Company that:

(a) The Carrier violated the current Signalmen's Agreement when it assigned and/or permitted Signalman R. N. Snodderly, a junior Signalman, to perform work on September 27 and 28, 1956, in place of Signalman R. A. Bilyou, who is senior to Signal R. N. Snodderly.

(b) The Carrier now compensate Signalman R. A. Bilyou for the difference in the amount he was paid and the amount that was paid to Signalman R. N. Snodderly for work performed on September 27 and 28, 1956, while both men were assigned to Foreman A. J. Mackie's Signal Gang on the Los Angeles Division. [Carrier's File No. 132-19-A-2]

EMPLOYEES' STATEMENT OF FACTS: On September 27 and 28, 1956, a Signal Gang under the direction of Foreman Mackie was engaged in completing work and checking equipment in connection with the installation of C.T.C. between Hobart and Rivera. In addition to Foreman Mackie's Signal Gang, the Carrier was utilizing the services of two other Signal Gangs in connection with the above project.

The claimant, Signalman R. A. Bilyou, with a seniority date in Class B of 12-27-55, was regularly assigned to a Signalman's position in Foreman Mackie's Signal Gang. On September 27, 1956, it was necessary for Foreman Mackie's Signal Gang to work overtime in order that a certain portion of the work be completed.

At 9:00 P. M. on September 27, 1956, Assistant Signal Supervisor J. H. Lucas instructed Leading Signalman J. G. Heilig and the group of Signalmen that he was in charge of to stop working. The claimant, Signalman R. A. Bilyou, was among the group of Signalmen instructed to quit working at

taken into account before, and the only question is whether the personal judgment of the latter referee * * * should be substituted for that of the former referee.'

"A contrary course would tend to encourage the deadlocking of future cases and discourage compliance with Board orders."

See also Award No. 6784 and others.

* * * * *

Without prejudice to its position as previously set forth herein that the Employees' claim in the instant dispute is wholly without support under the agreement rules, the Carrier desires to direct the Board's attention to the fact that the Employees' claim for nineteen hours (19') in behalf of the claimant, Mr. Bilyou, which contemplates the payment of time and one-half for nine (9) hours not worked, is not only excessive for the reason that, as previously shown herein, Mr. Snodderly actually received only 17'30" less compensation than the claimant, Mr. Bilyou, but is also improper and contrary to the Board's consistent holding that the right to work is not the equivalent of work performed under the overtime and other rules of a collective bargaining agreement. See Third Division Awards Nos. 5195, 5261, 5419, 5437, 5546, 5548, 5708, 5764 and others.

In conclusion, the Carrier respectfully reasserts that the claim of the Employees in the instant dispute is entirely without merit or support under the agreement rules in effect between the parties hereto and should be denied in its entirety.

All that is contained herein is either known or has been available to the Employees or their representatives.

OPINION OF BOARD: The issue in this case is whether the Carrier violated the Current Signalmen's Agreement when it assigned a junior signalman to perform work in place of a signalman with greater seniority.

This same question was before this Board in Award 8073 where the claim was denied.

The Board has consistently held that prior awards effecting the same issue are controlling unless shown to be palpably wrong. Awards 10086, 9954 and 8458. In our opinion Award 8073 is not palpably wrong and the claim must therefore be denied.

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 Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

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 20th day of December, 1961.