

Award No. 11173
Docket No. SG-9928

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
HUDSON AND MANHATTAN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Hudson and Manhattan Railroad Company that:

(a) The Carrier violated Rules 6 and 19 of the current Signalmen's Agreement when it assigned and permitted Assistant Signal Repairman M. T. Mondano to perform Signal Repairman's duties under the direction of a Leading Signal Tester and did not properly compensate him at the Signal Repairman's rate of pay for August 30, 1956, and September 11, 1956.

(b) The Carrier now pay Assistant Signal Repairman M. T. Mondano the difference in the rate of pay he received as Assistant Signal Repairman and that of Signal Repairman for August 30, 1956, and September 11, 1956.

EMPLOYEES' STATEMENT OF FACTS: Mr. M. T. Mondano is a regularly assigned Assistant Signal Repairman who works with and under the direction of a Signal Repairman. On August 30, 1956, and September 11, 1956, the Signal Foreman was off duty, and a leading Signal Tester was assigned by the Carrier to fill the Signal Foreman's Position. This action created a vacancy on the Leading Signal Tester position, and the Signal Repairman with whom Assistant Mondano was assigned to work with was assigned to the position of Leading Signal Tester. Assistant Mondano was then assigned by the Carrier to work with and under the direction of the Leading Signal Tester. Assistant Mondano then filed a claim for Signal Repairman's rate under Rule 19 as he was assigned to work with the Leading Signal Tester and performed Signal Repairman's work and should therefore be compensated at the Signal Repairman rate of pay.

The claims were filed with Mr. A. D. Moore, Assistant General Superintendent, who subsequently denied both claims under dates of October 16, 1956, and October 11, 1956. The claims were then turned over to General Chairman J. J. Reese for further handling on the property.

The claims were then handled in the proper and usual manner up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement.

"Assistant Signal Repairman: An employee who is in training for the position of Signal Repairman and working with and under direction of Signal Repairman, shall be classified as an Assistant Signal Repairman.

Rule 2 is as follows:

"Leading Signal Tester: An employee who is regularly assigned to supervise, make tests and perform work in connection with inspection, testing and repairing of signal apparatus and appliances, shall be classified as a Leading Signal Tester."

Rule 2 stipulates that a Leading Signal Tester is assigned, among other duties, to supervise the testing of signal apparatus and appliances. To supervise, means to direct either a Signal Repairman or an Assistant Signal Repairman or any other employee working under his jurisdiction. The reference in Rule 6 to "Signal Repairman" was only inserted to refer to the type of work an Assistant is to perform, and is in no way meant to require the Carrier to have only a Signal Repairman supervise an Assistant. To hold otherwise would be to put the Carrier in the absurd position of having only one man, the Signal Repairman, direct the work of a lower employee. This, in spite of the fact that the Signal Repairman's main function is to perform "construction, repair, test and maintenance work" and not supervise. Certainly, any supervisory employee who is charged with the work of inspecting, testing and repairing of Signal apparatus, should be able to supervise an Assistant Signal Repairman directly without having to go through a Signal Repairman.

CONCLUSION

Carrier submits that the claim of the employees should be dismissed and unwarranted.

OPINION OF BOARD: On August 30, 1956, and September 11, 1956, the Signal Foreman was off duty. A Leading Signal Tester was assigned by the Carrier to fill the Signal Foreman's position and the Signal Repairman was assigned to fill the position of the Leading Signal Tester. Claimant, an Assistant Signal Repairman, remained at work under the direction of the Leading Signal Tester. The claim is for the difference in pay between the rate of Assistant Signal Repairman and that of Signal Repairman for August 30 and September 11, 1956.

Employees contend that the Carrier violated Rules 6 and 19 of the Agreement. Rule 6 provides:

"Assistant Signal Repairman: an employee who is training for the position of Signal Repairman and working with and under the direction of Signal Repairmen shall be classified as an Assistant Signal Repairman."

Rule 19 says:

"An employee required to fill the vacancy of another employee receiving a higher rate of pay, shall receive the higher rate while so substituting; but if required temporarily to fill the vacancy of an employee receiving a lower rate, his regular rate will maintain."

The mere fact that Claimant worked under the primary supervision of a leading Signal Tester, does not per se entitle Claimant to the higher rate of pay. A leading Signal Tester also has the right to supervise employes of lower rank, including Assistant Signal Repairmen. Several classifications of employes have supervisory authority. Signal Foremen, Leading Signal Testers and Leading Signal Repairmen supervise and direct the work force. Rule 2 provides as follows:

"Leading Signal Tester: An employe who is regularly assigned to supervise, make tests and perform work in connection with inspection, testing and repairing of signal apparatus and appliances shall be classified as a Leading Signal Tester."

The claim cannot be determined solely on the basis of primary supervision. It needs to be resolved on the basis of the work involved and the kind of supervision which the particular work requires, if any.

It is true that Claimant was an apprentice learning the work of the Signal Repairman. This is specifically confirmed in Rule 48 of the Agreement which provides for progressive rate increases for this position every six months in a period of four years. During these four years an Assistant Signal Repairman is learning the trade and working under the supervision of a Signal Repairman. His skill and ability improves during this time. He progressively performs more and more of Signal Repairman's work with less and less supervision. He is at all times performing some of the Signal Repairman's work. The extent and amount depends on his tenure in the position and whether his work is being supervised by the employe directly designated in the Agreement.

There is no denial that neither on August 30 nor on September 11, 1956 was there a Signal Repairman on duty. While the Carrier, unquestionably, had the right to blank that position for the two days, there is also every reasonable assumption that the Assistant Signal Repairman remained on duty to do all of the signal repair work required on those days. Whether he did the work expertly and efficiently is immaterial. The Carrier saw fit not to assign a Signal Repairman to supervise his work as provided in Rule 6. The Supervision of the Leading Signal Tester is of a different nature. The latter had his own responsibilities and while he had authority to generally supervise the Claimant, he was not responsible for the signal repair work in the same manner as a Signal Repairman would have been had he worked those days with the Claimant.

It is precisely because the Scope Rule does not minutely define or set out work descriptions that we are obliged to find that Claimant did perform Signal Repairman's work on the mentioned dates. Rule 6 is sufficiently clear that an Assistant Signal Repairman works under the direction of a Signal Repairman. When he does not work under such direction he is performing Signal Repairman's work and is entitled to be paid the rate for that position. This is not inconsistent with our findings in Awards 10012 (*Weston*) and 10188 (*Larkin*) cited by the Carrier. The positions involved in those Awards did not require that kind of supervision nor were they apprentice positions as they are here.

In Award 3956 (*Carter*) we held that:

"... an assistant signalman or assistant signal maintainer must be working under the direction of a signalman or signal maintainer to be classified as an assistant. If, while working

alone, he performs the work of a signalman or signal maintainer, he is entitled to pay of those positions."

This principle was confirmed in Award 6263 (Wenke).

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 this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1963.