

Award No. 11280

Docket No. SG-10866

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Martin I. Rose, 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 violated the current Signalmen's Agreement, particularly the Scope Rule, Classification Rule, Overtime Rules, Bulletin Rules, and Seniority Rules, when on July 18 and 19, 1957, it assigned and/or required Henry Shank, regularly assigned first trick Signal Maintainer with headquarters at UD Interlocking, Joliet, Illinois, to perform work as a Towerman-Leverman at UD Interlocking Tower.

(b) The Carrier now pay Signal Maintainer Henry Shank for seven (7) hours on July 18, 1957, and five (5) hours on July 19, 1957, at his straight-time rate of pay, a total amount of \$28.27, covering the actual amount of time that he was required to perform work as a Towerman-Leverman at UD Interlocking Tower, Joliet, Illinois. [Carrier's File L-130-106]

EMPLOYEES' STATEMENT OF FACTS: Mr. Henry Shank is the regularly assigned Signal Maintainer with headquarters at UD Interlocking Plant, Joliet, Ill. Signal Maintainer Shank's assigned hours are from 7:00 A.M. to 3:00 P.M. and the maintenance of UD Interlocking Plant is a part of the signal maintenance territory assigned to Mr. Shank.

At about 8:00 A.M. on July 18, 1957, Signal Maintainer Shank was instructed by Signal Supervisor G. R. Swanson to stay in the UD Interlocking Tower to insure that the interlocking plant was operated properly because the Leverman was a new man filling a vacation vacancy. Inasmuch as the Leverman was a new man and was not familiar with the operation of the interlocking plant, nor had he qualified to operate such a plant, it was necessary for Signal Maintainer Shank to perform the work of the Leverman, pulling levers and routing trains properly over the interlocking plant.

During the time that Signal Maintainer Shank was required to stay in the Tower on July 18, 1957, and operate the interlocking plant, it was neces-

plete violation of the Signalmen's Agreement, and a sustaining award by this Board will reflect the proper application of the negotiated agreement and the precedents set by this Board.

All material and evidence used in the preparation of this submission was known or available to the Carrier while the case was being handled on the property.

CARRIER'S STATEMENT OF FACTS: Claimant is assigned as first trick signal maintainer, Joliet, assigned hours 7:00 A. M. to 3:00 P. M. Due to track being changed at Joliet crossing, the claimant, with headquarters at U. D. Interlocker was instructed to remain at his headquarters in case of signal trouble. At the time an inexperienced towerman-leverman was on duty in the tower, Mr. Shank, the claimant, worked only his regular hours, and any overtime worked was properly paid for under the applicable agreement. Formal claim was filed September 10, 1957 and declined September 18, 1957.

POSITION OF CARRIER: In this instance, the Carrier had a towerman-leverman employed at U. D. Interlocking, although he was an inexperienced employe, and Mr. Shank was instructed to remain at his headquarters point during his (Shank's) regular assigned hours in event of signal trouble due to track changes. He was not assigned as towerman, as a towerman was on duty and under pay, but merely was on hand for the period of claim on each of the dates in event trouble developed which the inexperienced towerman might not be able to handle and the latter could ask Mr. Shank for instructions. If Mr. Shank actually operated levers, he did so on his own accord. The motive in this case was not for the purpose of absorbing overtime, but merely to protect the operation of trains during track changes at a time an inexperienced towerman was on duty. (See Award 6686 of your Board.)

The claimant remained at his headquarters point during his own assigned hours and was so paid. He was not suspended from his own position to work overtime thereon. He was properly paid for his work on dates of claim. He is not entitled to pay for two positions as claimed. No other employe worked overtime on his (Shank's) regular assignment. Hence, there was no violation of Rule 14.

The employes cite Rule 25 as being violated. As a matter of fact, Rule 25 specifically permits using a signal employe on another position with the provision he will receive the higher rate, and his rate will not be reduced in event of filling a lower rated position. In this case, even on basis of employe's claim that the claimant during his regular assigned hours worked as a towerman-leverman, Rule 25 permits such use of claimant and his rate as signal maintainer being higher it was not reduced. There was not, therefore, a violation of Rule 25.

Nor can it be said that Rule 59, which we understand the employes use in an attempt to sustain their claim, was violated. Mr. Shank retained his bulletin assignment and was paid as signal maintainer on July 18 and 19, 1957.

On basis of the facts and evidence recited above, there is no merit to employes' claim for additional pay during claimant's own regular assignment and it should be denied.

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

OPINION OF BOARD: Claimant Shank is the regularly assigned first trick Signal Maintainer, 7:00 A. M. to 3:00 P. M., with headquarters at UD Interlocking, Joliet, Illinois. The claim is based on the assertion that the applicable Agreement was violated when Carrier, on the claim dates, assigned

and required Claimant to perform work as a Towerman-Leverman at UD Interlocking Tower. In this connection, the Employes assert:

" . . . Signal Maintainer Shank was instructed by Signal Supervisor G. R. Swanson to stay in UD Interlocking Tower to insure that the interlocking plant was operated properly because the Leverman was a new man filling a vacation vacancy. Inasmuch as the Leverman was a new man and was not familiar with the operation of the interlocking plant, nor had he qualified to operate such a plant, it was necessary for Signal Maintainer Shank to perform the work of the Leverman, pulling levers and routing trains properly over the interlocking plant."

On the other hand, and in sharp contrast, Carrier asserts that:

" . . . the Carrier had a towerman-leverman employed at U. D. Interlocking, although he was an inexperienced employe, and Mr. Shank was instructed to remain at his headquarters point during his (Shanks) regular assigned hours in event of signal trouble due to track changes. He was not assigned as towerman, as a towerman was on duty and under pay, but merely was on hand for the period of claim on each of the dates in event trouble developed which the inexperienced towerman might not be able to handle and the latter could ask Mr. Shank for instructions. If Mr. Shank actually operated levers, he did so on his own accord . . ."

Thus, the record shows that the issue here turns on a sharp factual conflict between the parties as to whether Claimant was assigned and required to perform work as Towerman-Leverman at U. D. Interlocker on the claim dates. The Employes have the burden of proof on this question. See Awards 9261, 9552. Careful consideration of the record fails to disclose evidence to support the Employes' claim. Assertions are insufficient and do not take the place of proof. See Awards 8065, 9788. As a result, the claim must fail for lack of proof.

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 Employes involved in this dispute are respectively Carrier and Employes 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

The evidence does not establish that the Agreement was violated.

AWARD

Claim denied in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1963.