

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Bernard J. Seff, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**HUDSON & MANHATTAN RAILROAD COMPANY**

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

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 1, when, on Sunday, October 5, 1958, it required and/or permitted a Signal Foreman to perform Signal Repairman's work of removing and replacing the chart from the recording voltmeter in the Hudson Terminal relay room when there was no Signal Repairman present.

(b) The Carrier should now be required to compensate Signal Repairman James J. Reese for eight hours at the Signal Repairman's prevailing overtime rate of pay for October 5, 1958, because of the above violation. [Carrier's File: Time Claim No. 118.]

**EMPLOYEES' STATEMENT OF FACTS:** During 1957, or early in 1958, the Carrier's signal forces installed a recording voltmeter in the Hudson Terminal signal tower relay room, to be used in detecting grounds on the A. C. Signal Mains. Just prior to the meter being placed in service, the 4 P.M.-to-midnight Signal Foreman instructed the 4 P.M.-to-midnight Signal Repairman what his duties and responsibilities were in the maintenance and operation of this meter, and the 4 P.M.-to-midnight Signal Repairman was the only repairman so instructed.

The 4 P.M.-to-midnight Signal Repairman at Hudson Terminal performed the work in connection with the meter each day, Monday through Friday. When he reported off duty at midnight the meter would not be changed until the following Monday just after 4 P.M. However, on October 5, 1958, the A.M. Signal Foreman removed and replaced the recording chart from the recording voltmeter located in the Hudson Terminal relay room at a time when there was no Signal Repairman present. On October 28, 1958, Mr. James J. Reese, Signal Repairman, presented the following claim to Mr. A. D. Moore, Superintendent Signal System and Way:

"Formal claim is submitted by the undersigned for 8 hours at the time and one half at the present Signal Repairman's prevailing rate for Sunday October 5th, 1958, when the A.M. Signal Foreman on

## CONCLUSION

The claim is without merit and should be denied.

**OPINION OF BOARD:** The parties are in agreement that the Claimant was regularly assigned to the 4:00 P.M. to midnight shift at Hudson Terminal, Monday through Friday. One of his responsibilities consisted of removing and replacing the chart from the recording voltmeter located in the Hudson Terminal relay room and that the job is regularly performed once each day during the Claimant's tour of duty. Replacing of the chart and winding the clock is not done on the days the Claimant is off which take place every Saturday and Sunday.

On Sunday, October 5, 1958, the Signal Foreman removed and replaced the chart on the recording voltmeter in the Hudson Terminal Relay Room when there was no signal repairman present.

Petitioner takes the position that when the Signal Foreman performed work regularly assigned to the Claimant, this constituted a violation of the Agreement and gave rise to the instant claim.

Carrier states that the Foreman (who, incidentally is a member of the Organization and is covered by the Agreement) acted as he did because he was confronted with a situation requiring special investigation after he had observed a ground in the signal system; further, that having observed a ground in the system, his failure to take the action he did with trains operating every few minutes might have been perilous; also the record contains the opinion of the General Superintendent that the claim is trivial.

Those provisions of the Agreement of the parties that cover the instant case are as follows:

**"RULE 1**

\* \* \* In case of signal failure, the present practice of Foreman assisting Signal Repairmen in clearing trouble, will be continued.

(b) A Foreman may be required, as part of his duties, to make inspections and tests in connection with his work but **shall not take the place of another employe** covered by this Agreement. In case of signal failure, the present practice of Foreman assisting Signal Repairmen in clearing trouble, will be continued." (Emphasis ours.)

Nowhere does the record show that the Foreman assisted the Signal Repairman in clearing the trouble. It is also not denied by the Carrier that the Foreman did in fact take the place of the Claimant. It is therefore clear that what transpired in the instant case represents a violation of the Agreement by the Carrier. The Carrier seeks to negate remedial action because of its suggestion that prompt action was required by its Foreman because "failure to take the action he did with trains operating every few minutes might have been perilous". If special action might be necessary to avoid peril, it would be a simple thing to write into the Agreement permission to take action in an emergency. Such a clause does not appear and it is beyond the authority of this Board to inferentially, by an Award, add a provision to the contract not secured in direct negotiation between the parties. It is also to be noted that if the situation here presented does constitute "peril", it is strange indeed that the man assigned to prevent such peril should be granted two days a week off without a reserve employe being assigned to prevent such peril.

With respect to that part of the Carrier's position which relates to the so-called trivial nature of the violation, the Board concurs with Award 8563 which in pertinent part states as follows:

" \* \* \* The protection of job classifications is a legitimate concern of employe representatives and quite generally is one of the prime objectives of collective bargaining agreements. To permit such protection to be eroded by any encroachment, even those that appear to be trivial, might easily impair the Agreement and its effectiveness in stabilizing employe-management relations. See Award 7022."  
(Emphasis ours.)

**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

That the Carrier violated its Agreement.

#### AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1964.