

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Central of Georgia Railway Company:

(a) That the Carrier violated our agreement of July 1, 1950, Rules 1, 4, paragraph two of Rule 47, Rule 61, and others, when on August 22, 1960, Mr. F. A. Downs, Leading Signalman in the Signal Gang, was instructed to remain at Childersburg, Alabama, and do the wiring and other signal work with the help of a Signalman and two Helpers or Assistants. These men were instructed to live in a sleeping car while the Foreman and the balance of the Signal Gang moved to East Point, Ga., about two hundred miles away. Mr. Gassett, the Signal Foreman, was told that there would be about six weeks work at East Point, Ga., for his gang.

(b) That Mr. F. A. Downs, Leading Signalman, be paid the difference between what he was paid as Leading Signalman and the rate for Signal Foreman, beginning Monday, August 22, 1960, and to continue until such time as this violation is corrected.

(c) That any other employe (Mr. J. E. Stewart) who was adversely affected by this job as Foreman not being advertised properly, be paid the difference in what he actually earned and what he would have earned as Signal Foreman. [Carrier's File: SIG 453].

EMPLOYEES' STATEMENT OF FACTS: For some time prior to August 22, 1960, the Carrier had a Signal Gang headquartered at Childersburg, Alabama, engaged in installing CTC in that area. The Gang, supervised by a Signal Foreman, was moved to East Point, Georgia — approximately 200 miles from Childersburg — to install a temporary interlocking on August 22, 1960. The Gang, including the Foreman, remained at East Point for the next four weeks and then returned to Childersburg.

Prior to leaving for East Point, the Gang's Foreman instructed Leading Signalman F. A. Downs, Signalman B. F. Jones, and Helpers Humphrey and Wills to remain at Childersburg and continue wiring instrument cases for the CTC project. While the Gang was at East Point, the employees remaining at

"AWARD

"Claim denied."

Third Division Award 6379 (Kelliher)

"The Petitioner has failed to sustain its burden of proof to show a contract violation."

"AWARD

"Claim denied."

Third Division Award 6378 (Kelliher)

"Based upon an analysis of all the evidence, it must be found that the petitioners have failed to sustain the burden of proof and, therefore, claim is accordingly denied."

"AWARD

"Claim denied."

Third Division Award 5418 (Parker)

"* * * Under our decisions (see e.g., Award No. 4011) the burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance and, where that burden is not met, a denial Award is required for failure of proof."

"AWARD

"Claim denied."

And there are many other Awards of the Board on this point, too numerous to mention.

In view of all the facts and circumstances shown by the Carrier in this Ex Parte Submission, Carrier respectfully requests the Board to deny this baseless claim in its entirety.

OPINION OF BOARD: Commencing June 13, 1960 the system Signal Gang, under the direction of Signal Foreman T. J. Gassett camped at Childersburg, Alabama while working on the extension of Centralized Traffic Control. On August 20-21, 1960 the major portion of the gang including the foreman moved to East Point, Georgia to install a temporary interlocking, and remained there for four weeks, returning to Childersburg thereafter. The four who remained at Childersburg during the work of the larger group at East Point were primarily involved in wiring instrument cases, and were under the supervision of Leading Signalman F. A. Downs.

On September 10, 1960 a claim was filed on behalf of Downs who claimed that he was entitled to compensation at the rate of foreman since he was doing foreman's work. Claim was also made for compensation at the foreman's rate for the senior employe who should have been given the foreman's work at Childersburg, later identified as J. E. Stewart. The Organization claims that Downs was filing work progress and payroll reports which was normally foreman's work; that with the foreman over 200 miles away the Childersburg crew was a separate entity with Downs as its independent supervisor and was so recognized by the Carrier in its orders and communications. Since the foreman's position was vacant, the Claimants were under Rule 47

entitled to pay for temporarily filling his vacancy. In addition, the Organization continues, the Carrier violated Rule 61 of the parties' Agreement by having a foreman 200 miles away who was unable to " * * * see that (camp) cars are kept in clean and sanitary condition," as required by the Agreement and by assigning this task to the Claimant. In view of the foregoing the Organization urges that Downs be reimbursed for earning lost by virtue of his performing foreman's work at lead signalman's rates and that Stewart is entitled to compensation for the Carriers failure to properly up grade him to the foreman's position for this period.

The Carrier denies that it acted improperly in handling supervision at Childersburg. It contends that this was still one gang, though as customary, working in different locations; that the foreman kept in daily oral contact with Leading Signalman Downs; that whatever reports the latter made were directed to the foreman and transmitted to the Carriers office through him; and that continued physical proximity is not a prerequisite of the foreman's role. It asserts that Rule 4 recognizes the right of the Leading Signalmen to direct the work of more than two employees and that no foreman is required by the Agreement unless the crew number exceeds five. In regard to Rule 61, the Carrier argues that the Leading Signalman properly carried out the responsibilities of his job when he reported to the foreman on the clean and sanitary condition of the car. Finally, it denies the validity of Paragraph (c) of the claim on the grounds of vagueness and indefiniteness pointing out that the name of Stewart as Claimant was supplied belatedly.

The instant claim lacks merit. It is clear from a reading of the evidence that, although not physically present, the Signal Foreman continued to exercise overall supervision of the work in progress at Childersburg. It is obvious that a foreman could not physically be present at the work site of every signalman in even a crew working from one base camp. For this reason the parties agreed to empower the Leading Signalman "under the direction and instructions of a foreman" to work with and direct certain employees. He was authorized to direct a crew as long as it did not exceed five in number (10361). There is no requirement in the Agreement of physical presence, nor of a maximum distance acceptable for the continuity of this supervising relationship between the foreman and the leading signalman. The fact is that although he may have been referred to as "in charge" of the Childersburg signal crew, he still was required to pass all reports to the foreman for the latters approval and relay to the Carriers officers. Should the reports have indicated that the crew of members thereof were operating or living in an unsatisfactory manner or contrary to the foreman's earlier directions, then appropriate measures could be readily taken to correct the deficiencies. But here the indication is that work progressed without incident and that the foreman did not need to return before several weeks had expired, much the same result as would have obtained had there been a shared base camp to which Signalmen reported daily from a diverse area without the foreman ever visiting their work sites.

As noted by Referee Bakke in Award No. 6582:

"It appears to us that what Claimant is arguing there is that Rule 4 requires that the Leading Signalman work with the Foreman in more or less constant physical proximity. If that were true, there would be no need for the classification of Leading Signalman 'working with and supervising the work of one or more signalmen.' After all, he is in a supervisory position himself and if he had to be receiving personal direction of the foreman every day, he would be a poor supervisor."

Further, as noted by Referee Carter in Award No. 7059:

"The need of supervision, in the absence of agreement provisions to the contrary is a matter within the prerogatives of management."

We agree with these holdings.

Accordingly, the claim is 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 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 13th day of January 1965.

Dissent to Award No. 13204, Docket SG-13112

While we do not take particular exception to the proposition that the "Leader" rule was intended to permit the working of small groups of employees without the constant physical presence of a foreman when it is necessary to subdivide a gang to accomplish a day's work, it is quite obvious here that the Majority has gone overboard in allowing the Carrier to separate a group from the gang at distances approximating infinity and long periods of time, and setting up the foreman as a "middle man" in the handling of reports to disguise its move to circumvent the agreement.

Award No. 13204 is in error; therefore, we dissent.

/s/ W. M. Altus
W. W. Altus
For Labor Members