

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, 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 the current Signalmens' Agreement, when a gang was sent out to install crossing signals and perform other signal work, not having a Signalman in this gang which consisted of a Leading Signalman and three (3) Assistant Signalmen. This is a violation of Rule 8 of the Agreement.

(b) That, beginning January 23, 1961 (sixty days prior to the date this claim was initiated), Mr. E. E. Murdock, Assistant Signalman, be paid \$2.626 per hour instead of the \$2.518 which he was paid, or the difference of 10.8 cents per hour. This time to continue until such time as this violation is corrected. [Carrier's File: SIG: 466]

EMPLOYES' STATEMENT OF FACTS: Rule 8 (a) provides that employees classified as Assistant Signalmen and Assistant Signal Maintainers are in training for positions of Signalmen or Signal Maintainers and while receiving such training must work with and under the direction of a Signalman or Signal Maintainer. Rule 8 (b) defines an Assistant Relay Repairman but is not pertinent to this dispute. The classification that has direct bearing on this case is that of Assistant Signaman whom, for the sake of brevity, we will henceforth refer to as an Assistant. The events leading up to this dispute are as follows:

Prior to this claim being initiated, the Carrier had a signal gang stationed at Childersburg, Alabama, installing an extension to its CTC system. The Carrier detached from this gang a Leading Signalman and three Assistant Signalmen and sent them to the vicinity of Columbus, Georgia, to install crossing signals. A companion case is being progressed to the Board in which the Brotherhood claims the Foreman rate of pay for the Leading Signalman as he was directing the work of the detached gang. The Foreman, under whom the employees involved here worked prior to being detached, remained at Childersburg or other locations at least 100 and at times 300 miles from the site where the Leading Signalman and three Assistant Signalmen worked.

Third Division Award 8768, Referee Donald F. McMahon:

"The Board is of the opinion that from a review of the record before us, the facts submitted are not sufficient to support a sustaining award."

Third Division Award 8430, Referee Carroll R. Daugherty:

"From a study of the whole record the Board is forced to conclude that the Employees have failed to support their contention. That is, the Carrier's decision not to assign Claimant to the new position is not found to have had such an arbitrary, capricious or unreasonable basis as to have constituted a clear abuse of managerial discretion and as to justify this Board now to substitute its own judgment for that of the Carrier. * * * " (Emphasis ours.)

Also see other awards, including Third Division Awards Nos. 8172, 7964, 7908, 7861, 7584, 7226, 7200, 7199, 6964, 6885, 6844, 6824, 6748, 6402, 6379, 6378, 6225, 5941, 2676, and others. Also see Second Division Awards Nos. 2938, 2580, 2569, 2545, 2544, 2042, 1996, and others—all of which clearly state that the burden is on the claimant party to prove an alleged violation of the agreement. To date, the Employees have produced no evidence of any violation.

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: The instant claim involves the alleged improper use of an Assistant Signalman to work directly under a Leading Signalman rather than under the direction of a Signalman or a Signal Maintainer under the Rules of the effective Agreement, the pertinent rules of which are:

"Rule 4. **LEADING SIGNALMAN:** A signalman under the direction and instructions of a foreman, working with and directing the work of more than two employees. However, the number of employees so directed shall not exceed a total of five at any time."

"Rule 8—(a) **ASSISTANT SIGNALMAN—ASSISTANT SIGNAL MAINTAINER:** An employee in training for the position of signalman or signal maintainer working with and under direction of a signalman or signal maintainer."

It will be observed that a Leading Signalman is a Signalman working with and directing the work of more than two employees. A mere reading of the Rules indicates the Petitioners' claim is without merit. The facts in this case are clearly distinguishable from those appearing in Awards Nos. 3956, 6263, and 11173.

There is an indication in the Record that a companion case is being progressed to this Board in which it is claimed that the Foreman rate should be paid to the Leading Signalman as he was directing the work of a detached gang in the capacity of a foreman. That question is not now properly before us consequently our opinion is without prejudice to any consideration of that matter by this Board.

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 Agreement has not been violated.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 28th day of January 1965.

**DISSENT TO AWARD NO. 13233
Docket No. SG-13272**

We perceive no distinction between the obvious intent of the Rule involved in Award No. 13233 and those in Awards Nos. 3956, 6263, and 11173. We therefore dissent.

**W. W. ALTUS
For Labor Members**