# Award No. 13819
# Docket No. SG-13767

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

## (Supplemental)

**Nathan Engelstein, Referee**

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF RAILROAD SIGNALMEN

## THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Pennsylvania Railroad Company that:

(a) On May 28, 1961, the Company violated Article 1, Section, 2(a) of the current agreement when they assigned maintainer's work between 9:00 A. M. and 3:00 P. M. to Leading Maintainer H. C. Resh without the assistance of a Signal Maintainer or Signalman. Leading Maintainer H. C. Resh was notified at 9:00 A. M. that Signal 569 on the Main Line east of Lancaster, Pa., was in the Stop and Proceed position.

(b) Signal Maintainer I. C. Book, who was available at this time, be paid the total of six (6) hours at the overtime rate.

[Carrier's File: System Docket No. 287 — Philadelphia Region Case No. 16528.]

EMPLOYES' STATEMENT OF FACTS: This dispute arose as a result of the Carrier assigning a Leading Maintainer to perform Maintainer's duties without the assistance of a Signalman or Signal Maintainer on a rest day of the regularly assigned Maintainer on whose territory the work was performed.

The folllowing is a brief outline of the events leading up to the dispute:

At 8:47 A. M. on Sunday, May 28, 1961, an engine crew reported that Signal 569, located east of Lancaster, Pennsylvania, on the territory of Maintainer Barrow, was displaying a stop and proceed aspect. Maintainer Barrow was called to investigate the trouble but was not at home; Maintainer Mabry was then called but requested that someone else handle the call, as he was leaving home; Maintainer Morris was then called but no one answered the phone, after which the Carrier called Leading Maintainer H. C. Resh who responded to the call, and performed six (6) hours' service correcting the trouble.

CONCLUSION

The Carrier has shown that no rule of the applicable Agreement supports the claim of the Employes and no violation of said Rules Agreement could possibly have occurred.

Therefore, your Honorable Board is respectfully requested to dismiss or deny the claim of the Employes in this matter.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The parties are in agreement on the following facts: Claimant I. C. Book was assigned as a Signal Maintainer with headquarters at Lancaster, Pennsylvania. On one of his rest days, Sunday, May 28, 1961, "F" Office reported that Signal No. 569 was not operating properly, Maintainer C. R. Barrow, in whose section Signal No. 569 was located, was called to correct the difficulty, but was not found to be at home. Then Maintainer C. D. Mabry was reached but did not accept the assignment. Maintainer R. S. Morris, who was called next, was not at home. Finally, Carrier located Leading Maintainer H. C. Resh, who put in six hours of work in servicing the defective signal.

The Brotherhood makes claim that Carrier violated Article 1, Section 2 (a) of the Agreement when it assigned this work to a Leading Maintainer without the assistance of a Maintainer. It points out that this Rule of the Agreement defines a Leading Maintainer as a Maintainer working with, and assigned to supervise, other designated employes. It contends that Maintainer and Leading Maintainer are two separate and distinct classifications, and that the assignment of a Leading Maintainer a supervisory official, to perform the work of a Maintainer without at least one Maintainer to supervise, is in violation of the Agreement. The Brotherhood also argues that Mr. I. C. Book had been used on this section on other occasions to perform overtime duties when other Maintainers were not available and that he should also have been called this time before the Leading Maintainer was called. Furthermore, it asserts that Maintainer I. C. Book, who was available and willing to perform the work, could have responded sooner than Maintainer C. D. Mabry because he had a shorter distance to travel.

In its denial, Carrier submits that by first calling upon Maintainer C. R. Barrow in whose section the difficulty occurred, it complied with Article 2, Section 23 (h). Furthermore, it asserts that by calling three Maintainers without success before asking the Leading Maintainer to do the repair work, it exercised reasonable efforts to reach a Maintainer.

Since the work required was on a Sunday, not part of any assignment, Carrier, in the absence of an available unassigned employe, properly first calls Mr. C. R. Barrow, the regular employe, in whose territory the trouble occurred under Article 2, Section 23 (h). The Agreement is silent as to the procedure to be followed in the event that the regular employe is unavailable.

The question to be resolved therefore is whether, after compliance with this Rule, Carrier may properly call upon a Leading Maintainer to perform this work without the assistance of a Maintainer.

Article 1, Section 2 (a) defines a Leading Maintainer in these words:

> "(a) Leading Maintainer: A Maintainer working with and assigned to supervise the work of one or more signal maintainers, tele-

graph and signal maintainers, telegraph and telephone maintainers, or signalmen, with or without their assistants or helpers. The number of employes so supervised shall not exceed a total of five (5) at any one time. This paragraph does not apply to employes regularly assigned to and held responsible for the inspection, testing and repairs of relays, insulated wire or locking."

This Rule recognizes that a Leading Maintainer is not only a supervisor of Maintainers but is also a Maintainer himself, namely an employe who can perform this type of mechanical work. There is nothing in the Rule to prohibit a Leading Maintainer from doing Maintainer work if he is working alone. It is true that there are the two separate classifications, Leading Maintainer, and Maintainer, but these classifications serve to determine rates of pay and do not preclude the Leading Maintainer from performing Maintainer work if he is without helpers. Carrier, therefore, met its obligations under Article 2, Section 23 (h) by calling Maintainer C. R. Barrow the regular employe in whose territory the difficulty arose. That it called two other Maintainers is indicative of a reasonable effort to find a Maintainer, but such action does not constitute proof that further calls were required under the Agreement.

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 of the parties 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 6th day of August 1965.

DISSENT TO AWARD No. 13819, DOCKET No. SG-13767

Award No. 13819 is an outstanding example of the Majority (Carrier) Members' inconsistency; it clearly demonstrates that their only purpose is to obtain denial awards, even though in so doing they only perpetuate areas of dispute and completely disregard this Board's purpose — the prompt and orderly settlement of all disputes. It now appears that they have repudiated their earlier awards.

In their Award No. 13819 they say:

> "It is true that there are the two separate classifications, Leading Maintainer, and Maintainer, but these classifications serve to determine rates of pay and do not preclude the Leading Maintainer from performing Maintainer work if he is without helpers. Carrier, therefore, met its obligations under Article 2, Section 23 (h) * * *."

In Award No. 12134 (cited in Awards Nos. 12936 and 13262) they held that:

> "Thus the Claimant who was a Leading Signal Maintainer was in the Leading Signal Maintainer's Class, and not in the class of Signal Maintainers. He should not have been called to perform the overtime on the second shift in a position of Signal Maintainer, any more than Signal Maintainer Helper should have been called, as he was in a different class."

When one further notes that in Award No. 12134 the Leading Maintainer and Maintainer are in the same seniority class and that in Award No. 13819 they are in separate seniority classes, the inconsistency of the Majority becomes even more apparent. Surely the employes cannot be wrong in both instances.

We hold the Majority's contempt for the Agreements to be palpably wrong, and we therefore dissent.

W. W. Altus
For Labor Members 8/25/65

## CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S DISSENT TO AWARD 13819, DOCKET SG-13767

**(Referee Engelstein)**

The Dissentor fails to give the reader one vital piece of information necessary to an intelligent and honest review of awards cited. In **Award 12134**, the Agreement contained the following rule interpreted by the Board:

> "Rule 12. (e) When overtime service is required of a part of a crew or group of employes, the senior employes of that crew or group, of the class involved shall have preference to such overtime if they so desire."

That rule is not contained in the Agreement interpreted in **Award 13819**. In short, there was no restriction imposed on the Carrier in the use of a Lead Maintainer performing work as a Maintainer. In the absence of such a restrictive provision, the Carrier was free to use the Lead Maintainer to perform Maintainer's work. This conclusion reached by the Majority is perfectly consistent with our decision in **Award 12536** — and for the reasons shown — not inconsistent with **Award 12134**.

W. F. Euker
R. A. DeRossett
C. H. Manoogian
G. L. Naylor
W. M. Roberts