Award No. 13928
Docket No. SG-13726

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rules 18(a) and 27(a), when it required signal employes not assigned to the Boyles Classification Yard territory to perform signal work on that territory, instead of using employes regularly assigned to that territory, on April 6, 7, 10, 11, 12 and 13, 1961.

(b) The Carrier now be required to compensate K. R. Smith for eight hours per day at one and one-half times the Signal Maintainer rate of pay for each of the dates listed in paragraph (a).

EMPLOYES' STATEMENT OF FACTS: During the period involved in this dispute, Claimant Smith held a regular assignment of third trick signal maintainer at Boyles Yard. On the dates listed in paragraph (a) of our Statement of Claim, the Carrier required and/or permitted assistant signalmen from adjacent territories to assist the first trick signal maintenance employes at Boyles Yard in pulling in and hooking up new wires in connection with the installation of new test equipment.

Inasmuch as Rule 18 provides that maintenance employes will be called for service to be performed on their assigned territory, and Rule 27 prohibits the Carrier from changing an employe from his assigned position except in emergency, the Brotherhood's Local Chairman presented a claim on behalf of Signal Maintainer Smith for eight hours' overtime pay for each day listed in paragraph (a) of our Statement of Claim. The original claim, presented to the Supervisor Communications and Signals on May 4, 1961, has been reproduced and attached hereto as Brotherhood's Exhibit No. 1. The Supervisor's denial, dated June 5, 1961, is Brotherhood's Exhibit No. 2.

On June 29, 1961, the Local Chairman advised the Supervisor of the rejection of his decision, then presented an appeal to the Superintendent. The Superintendent's denial, dated July 12, 1961, is Brotherhood's Exhibit No. 3.

The proof of this is the general practice followed in rendering such assistance — see the Director of Personnel's letter of November 10, 1961, to the General Chairman, supra, reading in part:

> "Your attention was also called to the fact that it has been a general practice in the past, without complaint or claim, for signal employes to call on signal employes on adjoining territories when assistance was needed, both on line-of-road territories and at those points where more than one shift of employes was assigned."

The General Chairman admitted in his letter of November 22, 1961, supra, that it had been the practice on line-of-road territories when assistance was needed to call on the adjoining maintainer in line with his seniority for assistance, but contended it had not been the practice where more than one shift of employes was assigned.

The General Chairman's contention is not supported by statements of supervisors in charge of points where more than one shift of maintainers was employed. See the Director of Personnel's letter of November 29, 1961, to the General Chairman, supra, reading in part as follows:

> "According to our information, as stated in our letter of November 10, it has been a general practice, without complaint or claim, for signal employes to call on signal employes on adjacent territories when assistance was needed, both on line-of-road territories and at those points where more than one shift of employes was assigned. You will recall Mr. Lewis read to you statements made by a number of supervisors in this connection during conference, November 3."

Carrier submits Rule 27 obviously does not support Claimant's claim.

In view of the foregoing, Carrier contends there was no violation of the agreement for which reason the claim should be denied.

OPINION OF BOARD: Brotherhood contends: (1) That on the dates set forth in Paragraph (a) of its Claim, Carrier changed assistant maintainers from their assigned positions on different territories to perform work belonging to another position in the territory of the Boyles Yard in violation of Rule 27(a) which reads in part: "(a) Except in emergency, an employe will not be changed from his assigned position . . . to another . . ."; (2) That on those dates Carrier failed to call an employe regularly assigned to the Boyles Yard territory to perform the involved work on an overtime basis, thus violating Rule 18 (a) which reads as follows:

> "(a) Employes assigned to or filling maintenance positions will notify the management where they may ordinarily be called. If on specific occasions they desire to be off call, they will so advise the person designated for the purpose. Unless registered off call, they will be considered as available and will be called for service to be performed on their assigned territory and will respond as promptly as possible when called.";

and (3) That Carrier's actions also violated Rule 14 of the Agreement which reads:

> "Employes will not be required to suspend work during regular working hours to absorb overtime."

Carrier argues: 1. That the assistant maintainers were not changed from their assigned positions as contemplated by Rule 27 (a); 2. That the involved work was not the work of a maintainer, but of an assistant or of a helper and did not therefore require the calling of a maintainer at all; and 3. That there was thus no violation of the Agreement.

There is no dispute that on the dates in question "Assistant Maintainers" from different territories were brought to the Boyles Yard territory to help pull in new wires from control racks through wire chaseways to new test equipment being installed there. Carrier bases its argument 1. above on the contention that past practice shows that the changes in assigned position forbidden by Rule 27 (a) were not intended to include assignment of employes from the adjoining territories to assist, when needed, on line-of-road territories or at points (as here) where more than one shift of employes is assigned. Brotherhood, while conceding the practice on line-of-road territories, denies it in cases where more than one shift of employes is assigned; Brotherhood also argues that where the Agreement is clear and unambiguous no amount of practice can change its meaning.

In this case the changes from assigned position were to perform work in a territory where more than one shift of employes were assigned. The fact, as it is conceded, that changes from assigned position to perform work on line-of-road territories in line with seniority was customary without complaint by Brotherhood indicates that evidence of practice may prove the intention of the parties to modify the normal meanings attaching to the language in Rule 27 (a), but it does not stretch to proving the intention to exclude changes to territories where more than one shift was assigned and where calls for overtime work could be involved.

Proof of practice relating to changes such as were involved in this case would have to be in the record for us to make a finding that the parties did not intend such changes to be covered by the Rule. The record, although it contains repeated assertions to that effect, does not contain such evidence. From the record we find that at a conference held between the parties on Novmber 3, 1961, Carrier's representative called attention "to the fact that it has been a general practice in the past, without complaint or claim, for signal employes to call on signal employes on adjoining territories when assistance was needed, both on line-of-road territories and at those points where more than one shift of employes was assigned." At that conference, Carrier representative read a number of statements "in this connection" to Brotherhood representative. Brotherhood representative at the conference, while conceding the practice in part, denied categorically that it was the practice where more than one shift of employes was assigned. Following this denial, Carrier repeated its assertion but offered no probative evidence to support the assertion. Since Carrier is urging that evidence of practice be considered to prove a different intent than is found by a reading of the language of the rules with normal meanings attaching to the words, the burden of supporting the assertion with adequate evidence is Carrier's, and Carrier has failed to introduce such evidence.

Carrier also argues that it was not required under Rule 18 to call a maintainer to perform the work of a helper or of an assistant maintainer, and Carrier asserts that the involved work was such work. Rule 7 defines a Signal Maintainer as: "An employe assigned to perform work generally recognized as signal work."; there is no evidence in the record and there is nothing in the Agreement, including in Rules 8 and 9, which respectively define Assistant Signal Maintainer and Signal Helper, which shows that the involved work was not such generally recognized signal work as intended by Rule 7.

There is no dispute about the fact that Claimant was "on call" under Rule 18 on the dates in question; had he been called to perform the involved work he would have been on overtime; he would not, as implied by Carrier, have been changed from one shift to another; to have done so would have violated Rule 27 (a) in a different fashion. Rule 18 requires that an employe so on call "will be called for service to be performed on their assigned territory. . . ." The fact that there may have been another Maintainer "on call" in the same territory at the same time does not negate this claim. Claim is made for this Claimant, and no claim is made for the other possible Claimant; Claim will be allowed only for the one Claimant named in the Claim.

Since we find that the work was work included within the duties of the Signal Maintainer classification, and that assignment of the work to employes from other territories violated the agreement, and since there were employes assigned to the territory who had a right to be assigned the work under Rule 18, a finding is not necessary on the question of the alleged violation of Rule 14.

We will, for the foregoing reasons, sustain the claim as presented; we sustain the claim for damages at the time-and-one-half rate because we have found that the involved work would have been performed on overtime had Carrier not violated 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 was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1965.