

Award No. 14072

Docket No. SG-13982

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, especially Rule 38(b), when it did not allow Leading Signalman B. D. Barton pay for work which should have been assigned to him at the Milwaukee Relay Repair Shop, Milwaukee, Wisconsin, on the following dates:

Saturday,	October 21, 1961 — 8	hours
Sunday,	October 22, 1961 — 8	hours
Monday,	October 23, 1961 — 2½	hours
Tuesday,	October 24, 1961 — 2½	hours
Wednesday,	October 25, 1961 — 2½	hours
Thursday,	October 26, 1961 — 2½	hours
Friday,	October 27, 1961 — 2½	hours
Monday,	October 30, 1961 — 2	hours

(b) The Carrier now be required to compensate Leading Signalman B. D. Barton at his overtime rate of \$4.028 per hour for the number of hours enumerated above.

[Carrier's File: Case No. F-1041]

EMPLOYEES' STATEMENT OF FACTS: The Carrier purchased approximately 75 relays from the Transcontrol Company which were found to be defective. To correct this condition, the Carrier used four Signalmen under the supervision of a foreman, all of whom are assigned to the Signal Repair Shop in Milwaukee. This group of employees spent 30½ hours outside regularly assigned work periods performing the work in question. The Brotherhood contends that under the provisions of the current Signalmen's Agreement, Leading Signalman B. D. Barton who is also assigned to the signal repair shops in Milwaukee, should have been given consideration for this work as he is senior to the employees who performed the work.

The responsibility for the selection of employes and their promotion is the Carriers: and we should not substitute our judgment based on paper for the Carrier's first hand judgment, except upon a showing of abuse of discretion (Award 5292, bad faith, capriciousness, bias or partiality: the burden rests upon Claimant to overcome that decision by substantial and competent proof."

It was and is the judgment of the Carrier Officers concerned that Claimant Barton was not qualified to perform the specialized and precision relay repair work with which we are here concerned.

The Carrier submits that there is nothing in the schedule rules which requires the Carrier to set aside the considered judgment of its officers and accept instead the contentions of its employes.

It must be kept in mind that in the performance of the work involved the Carrier merely acted as an agent for the Transcontrol Company and performed said work at the direction and expense of the Transcontrol Company and under such circumstances, while arrangements were made with the Transcontrol Company to have this work performed by employes within the scope of the Signalmen's Agreement who were qualified to perform same, yet under those same circumstances the Carrier submits that the Signalmen's Organization cannot properly lay claim to such work.

The Carrier maintains that it was and is the judgment of the Carrier Officers that claimant Barton was not qualified to perform the specialized and precision relay repair work with which we are here concerned and the Carrier's judgment in that regard should not be set aside, nor would there be any basis for doing so under the schedule rules of the parties here in dispute.

There is absolutely no basis for the instant claim and the Carrier respectfully requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier purchased a number of relays which upon receipt were found to be defective. Seller worked out an arrangement with Carrier whereby Carrier would put the relays in proper condition in its Signal Shop using its Signal Shop employes to perform the work.

The work was performed outside regularly assigned hours at the overtime rate. Claimant was a member of the Shop force but was not used although he was senior to some of those who were used. The reason given by Carrier for bypassing Claimant was that he had no experience in repairing relays; therefore, he was not qualified to perform the work in question.

The Employes contend that since the bulletin by which Claimant acquired his job in the Shop spelled out, among other things, the repairing of relays, together with the fact that Claimant's qualifications had never been questioned, Carrier erred in depriving him of an opportunity to share in this overtime work.

Whatever merit there may or may not be in Petitioner's contention that Claimant's ability in the Shop has not heretofore been questioned, the fact remains that the parties have agreed in Rule 38(b) that " * * * if the overtime work requires less than the regular number of employes, senior qualified

employees will be given preference to such overtime work." Therefore, in the absence of evidence that Claimant was qualified to perform the work at hand, this Claim cannot be sustained.

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 7th day of January 1966.