



Award No. 14380
Docket No. SG-14148

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

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

(a) The Southern Pacific Company violated the current Signalmen's Agreement, effective April 1, 1947 (reprinted April 1, 1958 including revisions) when it failed and/or declined to apply Rules 13 and 70, or other provisions of the Agreement, by not allowing the senior man in a class the privilege of working overtime in seniority order on January 19 and 20, 1962, in the operation of a snow spreader on the Cascade Line, Portland Division.

(b) Mr. F. F. Shanbeck be allowed sixteen (16) hours at the overtime rate of Leading Signalman for January 19 and 20, 1962.
[Carrier's File: SIG 148-75.]

EMPLOYEES' STATEMENT OF FACTS: At the time this dispute arose, Mr. F. F. Shanbeck was on a Leading Signalman position, and Mr. M. C. Vearrier on a Signalman position, on Signal Gang No. 4. As shown by Rule 74 of the current Signalmen's Agreement, Leading Signalmen get 6.4 cents per hour more than Signalmen. However, as shown by Rule 32, Leading Signalmen and Signalmen are in the same seniority class.

For ready reference, we hereby list the seniority dates of these two men in the various classes in which they hold seniority under the Signalmen's Agreement:

	Class 5	Class 4	Class 3	Class 2
Shanbeck	8- 8-41	10-16-41	7- 1-42	
Vearrier	5-17-49	5-17-49	5-17-49	7-6-54

On January 19, 1962, Mr. Vearrier was called, at 7:30 P. M., to operate a snow spreader because of a heavy snow storm. He was released at 11:30 A. M. on January 20, 1962, having worked a total of sixteen (16) hours overtime.

Inasmuch as Mr. Shanbeck has more seniority in Class 3 (Signal Inspectors Division, Assistant Signal Shop Foreman, Leading Signalmen, Leading Signal Maintainers, Signalmen, and Signal Maintainers) than Mr. Vearrier, and was

signalman on Gang No. 4 and senior to Signalman Vearrier, for compensation, at overtime rate of pay, allowed Signalman Vearrier January 19 and 20, 1962. Superintendent denied the claim in his letter of February 27, 1962 (Carrier's Exhibit B). By letter dated March 20, 1962 (Carrier's Exhibit C), Petitioner's local chairman rejected the Superintendent's denial of the claim, and by letter dated March 22, 1962 (Carrier's Exhibit D), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, who denied the claim by his letter of May 21, 1962 (Carrier's Exhibit E).

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is identical, except as to the date of occurrence, with the claim in Award 13520 (O'Gallagher). We have held that a prior award involving the same issues, the same parties and the same rules should not be revised in a subsequent award unless it can be shown that the prior award was palpably erroneous. Awards 10911, 11140.

We do not regard the result of Award 13520 erroneous although we do not subscribe to the theory under which it was decided. We would, however, have reached the same result under the theory that the Carrier is under no contractual obligation to assign work to an employe who is not qualified nor to instruct an employe so as to qualify him for work which is not within the scope of the Agreement. We, therefore, consider Award 13520 dispositive of the issue.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of May 1966.

DISSENT TO AWARD 14380, DOCKET SG-14148

In this Award the Majority has again assumed the role of rule writer and, therefore, committed the same error that was committed in the Award relied upon. This Award not only compounds the error committed in 13520 but also adds another to an overabundance of excuses for ignoring clear and unqualified language arrived at in across-the-table negotiations between the parties.

G. Orndorff
Labor Member

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