Award No. 14382
Docket No. SG-14154

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 men in a class the privilege of working overtime in their seniority order on March 1, 2 and 3, 1962, in the operation of a snow spreader on the Cascade line, Portland Division.

(b) Mr. F. F. Shanbeck be allowed ten and one-half (10½) hours at his overtime rate of pay for March 1, 1962, and seventeen (17) hours at his overtime rate of pay for March 2 and 3, 1962.

[Carrier's File: SIG 148-78.]

EMPLOYES' 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 March 1, 1962, Messrs, Shanbeck and Vearrier were called in snow service on the Cascade line at approximately 11:00 A. M. They traveled on Train No. 9 to the location of the snow spreader at Cruzatte siding. Mr.

keeping that line open with the use of only one crew on the snow spreader in service. On that date, when it became necessary to relieve the crew on the snow spreader in order for them to obtain their required rest, and account there not being enough maintenance of way employes available and qualified to make up a second crew on the snow spreader, Carrier, in this emergency situation, called Signalman Vearrier, assigned to Signal Gang No. 4, to operate one wing of the snow spreader. Vearrier performed service on the snow spreader from 4:00 P. M., March 1, to 2:30 A. M., March 2, and from 6:00 P. M., March 2, to 11:00 A. M., March 3, 1962.

Vearrier, prior to his transfer to the Signal Department in 1945, had been a spreader operator during the interval 1943 to 1945, during which time he was a maintenance of way employe.

At no time has claimant Shanbeck qualified for operator of snow equipment.

3. By letter dated April 1, 1962 (Carrier's Exhibit A), Petitioner's local chairman presented claim in behalf of claimant herein, working as lead signalman on Gang No. 4 and senior to Signalman Vearrier, for compensation, at overtime rate of pay, allowed Signalman Vearrier on March 1, 2, and 3, 1962. Superintendent denied the claim in his letter of April 9, 1962 (Carrier's Exhibit B). By letter dated April 26, 1962 (Carrier's Exhibit C), petitioner's local chairman rejected the Superintendent's denial of the claim, and by letter dated April 30, 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 June 19, 1962 (Carrier's Exhibit E).

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 with 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 14382, DOCKET SG-14154

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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