



Award No. 14397
Docket No. SG-12310

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Great Northern Railway Company that:

(a) The Carrier has and continues to violate the Vacation Agreement of December 17, 1941, and subsequent Vacation Agreements dated February 23, 1945, March 19, 1949, and August 21, 1954, by not providing relief Maintainers as they have in the past.

(b) The Carrier has and continues to violate Rule 49 of our Agreement by assigning Maintainers to protect not only adjoining Maintainers' districts but other districts while the Maintainer is away on vacation or laying off at times.

(c) The following Signal Maintainers assigned to protect adjoining and/or other districts while the Maintainer assigned to that district is off account vacation or laying off, be paid four (4) hours at the pro-rata rate of pay for each day they protect except as provided in Rule 49:

Hugh Thomas, fifteen (15) days, July 6 to 24, 1959.
Kaare Roe, eleven (11) days, July 11 to October 11, 1959.
L. O. Bryson, fifteen (15) days, July 20 to August 7, 1959.
E. B. Luse, thirty (30) days, July 25 to November 1, 1959.
Andy Anderson, thirty (30) days, July 27 to September 4, 1959.
A. L. Frederickson, twenty-four (24) days, July 27 to Nov. 1, 1959.
R. Brashear, thirty-six (36) days, August 2 to September 6, 1959.
A. L. Buckland, fifteen (15) days, August 10 to 28, 1959.
J. Steinberg, two (2) days, August 22 and 29, 1959.
L. M. Mills, sixteen (16) days, August 31 to October 25, 1959.
H. M. Gee, twenty (20) days, August 31 to September 26, 1959.
E. F. Mares, eighteen (18) days, August 31 to October 4, 1959.
Lee Sapp, twenty (20) days, September 5 to 26, 1959.
R. Harding, eighteen (18) days, September 14 to October 3, 1959.

T. J. Ryder, eighteen (18) days, September 14 to October 3, 1959.
K. B. Warren, fifteen (15) days, October 12 to October 30, 1959.
C. R. Johnson, eighteen (18) days, October 12 to October 31, 1959.
L. J. Luchi, eighteen (18) days, October 19 to November 8, 1959.

[Carrier's File: S-23]

EMPLOYES' STATEMENT OF FACTS: Prior to and during 1957 the Carrier provided vacation relief workers for signal maintenance districts. During 1958, however, the Carrier discontinued providing vacation relief workers as it had in the past, and required the remaining Signal Maintainers to protect the vacationing Maintainers' districts. In some cases a remaining Signal Maintainer would be required to protect part of one adjoining district in addition to continuing his own work; in some cases he would be required to protect part of the districts on both sides of his district; in some cases he would have to protect all of another district, or two or three other districts, making a total of four districts in some cases. The Carrier also reduced forces and made signal maintenance districts longer.

The Carrier's action of failing to provide vacation relief workers in 1958 resulted in a number of claims on behalf of Signal Maintainers who were required to protect additional maintenance territory during vacation or other absence of other Signal Maintainers. Those claims were progressed on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement. The 1958 claims were not progressed to this Board as it was felt that there had been a technical violation in the manner of handling on the property, and it was the opinion of the Brotherhood that the Carrier's failing to provide vacation relief workers, as it had in the past, was placing such a heavy burden on the remaining Signal Maintainers, and having such far-reaching effects, that this Board should dispose of the issue involved herein without becoming involved in technicalities concerning the manner in which the dispute had been handled on the property.

The 1958 claims involved a considerable amount of correspondence and the entire vacation relief situation was discussed in conference. The Carrier was advised that the Brotherhood had no intention of dropping this matter just because it had dropped the 1958 claims, but that future claims, if necessary, would be progressed through the proper and usual channels, up to and including the National Railroad Adjustment Board.

During the handling of the 1958 claims the Carrier had raised an objection about the claims not being specific as to names and dates, so the 1959 claims were filed on behalf of each Signal Maintainer for each specific period, on a blank form that had been prepared for that purpose. This necessitated a multitude of claims. The Carrier and the Brotherhood discussed the possibility of a special understanding to permit these vacation claims to be handled with a minimum amount of work, but no agreement in this respect was reached.

The claims were initially filed individually with the Division Superintendent, and his decision was appealed to the General Manager. The General Manager's decision was appealed to Mr. C. A. Pearson, Vice President, the highest officer of the Carrier designated to handle such disputes.

submitted carbon copies to the officer at each level of appeal. These Statements of Claim merely contained a general allegation that the failure to provide relief maintainers violated the Vacation Agreement and Rule 49 of the Schedule Agreement. See Carrier's Exhibit C-1. The mimeographed Statement of Claim does not explain the basis of the demand for four hours at the time and one-half rate for each day claimed, but the General Chairman admitted that it was merely an arbitrary figure picked out of the air. See the fourth paragraph of Carrier's Exhibit C-3. The claims were declined by the Carrier at each step of appeal, and discussed in conference without any reasonable possibility of settlement since the Organization had previously given notice that all of these claims would be submitted to this Board unless vacation relief workers were furnished in every case where signal maintainers leave on vacation whether they are needed or not.

(Exhibits not reproduced.)

OPINION OF BOARD: A Carrier is not required to provide a vacation relief worker if a relief worker is not needed in the given instance, and if failure to provide a vacation relief worker does not burden those employees remaining on the job, or burden the employee after his return from vacation. (Section 6, Vacation Agreement.)

Referee Wayne L. Morse has ruled that the word "burden" means "overtaxed . . . a man is not overtaxed so long as he is reasonably able to do the work."

A Carrier is restricted by the 25 per cent rule in transferring work of a vacationing employee to other employees. The mere assertion by the Organization that remaining employees were overburdened is not sufficient. Proof is required. The agreement itself establishes the right of Carrier (Rule 10) to temporarily transfer Signalmen from one seniority district to another.

In the case here, the Organization, in the handling on the property, failed to offer any evidence to support its basic claim that Carrier's action violated Rule 49. No supporting evidence appears in the Organization's submissions to this Board of any rules violation.

Contrariwise, Carrier's action is fully supported by the provisions of the applicable agreements, as well as prior decisions of this Board, such as Awards 9556, 12209, 13175.

Organization has failed to meet its burden of proving, by competent evidence, the claim before us. A denial award is required.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 6th day of May 1966.

DISSENT TO AWARD NO. 14397, DOCKET NO. SG-12310

Award No. 14397 is just another example of the carrier members and a referee characterizing the employes' evidence as assertions and taking a carrier's uncorroborated offerings as gospel. The manner in which the claimants were burdened was clearly and uncontrovertibly set out in the record; because the Majority chose to ignore the evidence and reach an erroneous award, I dissent.

W. W. Altus
For Labor Members
5/19/66