



Award No. 14493
Docket No. SG-14182

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) particularly Rules 41 and 70.

(b) Mr. R. J. Frazier be paid the difference between his rate of pay as Lead Signalman or Signalman and that of Signal Foreman for all hours worked from 4:00 P. M., March 23, 1962, until such time as this violation is corrected. [Carrier's File: SIG 130-8]

EMPLOYEES' STATEMENT OF FACTS: This dispute is a result of Carrier's action in discontinuing an established Signal Foreman position and creating a Leading Signalman position, and is based on our contention that Carrier violated Rule 41 of the current Signalmen's Agreement because the Leading Signalman position covers relatively the same class of work that had been performed by the Signal Foreman, and that the former Signal Foreman suffered a loss of earnings because of this violation and should be reimbursed for such loss as provided in Rule 70.

Prior to the time this dispute arose, Mr. R. J. Frazier was the incumbent of the Signal Foreman position on Signal Gang No. 11, Sacramento Division.

On March 15, 1962, Carrier's Signal Supervisor issued Signal Department Notice No. 8, advertising a Lead Signalman position on Gang No. 11, and abolishing two Signalmen positions and the Signal Foreman position on that gang. (See Brotherhood's Exhibit No. 1.)

Upon receipt of this notice, the Brotherhood's Local Chairman directed the Signal Supervisor's attention to Rule 41 of the current Signalmen's Agreement, which reads:

"Rule 41. ESTABLISHED POSITIONS. Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of the rules in this agreement."

The Signal Supervisor then issued Notice No. 9 (Brotherhood's Exhibit No. 2) dated March 20, 1962, cancelling Notice No. 8 and abolishing Gang No. 11. On the same date the Signal Supervisor issued Notice No. 10 (Brotherhood's

gram was such that a gang of this size was no longer required. Signal Gang #10, consisting of one Leading Signalman (claimant in this case) and two Signalmen, was established on April 5, 1962, to work in the same general area.

3. Claim was originally submitted by Local Chairman L. H. Carmichael (see Carrier's Exhibit "A") on behalf of R. J. Frazier "for the difference between whatever his rate of pay may be and that of a Signal Foreman for all hours worked from 4:00 P. M., March 23, 1962, until such time as this violation is corrected," alleging violation of Rules 41 and 70 of the current agreement. Claim was denied by Superintendent on May 28, 1962 (see Carrier's Exhibit "B"). General Chairman appealed claim to Assistant Manager of Personnel on June 19, 1962 (see Carrier's Exhibit "C"), who subsequently denied the claim on August 1, 1962 (see Carrier's Exhibit "D").

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to March 15, 1962, Signal Gang No. 11 on Carrier's Sacramento Division consisted of one Signal Foreman, who was the Claimant, and seven signalmen. On that date, Carrier issued Notice No. 8, which abolished two Signalman positions and the Signal Foreman. At the same time it advertised a new position of Leading Signalman for the gang and invited bids. The Organization notified Carrier's Signal Supervisor that it regarded the move as a violation of Rule 41 which reads:

"Rule 41. ESTABLISHED POSITIONS. Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of the rules in this agreement."

Carrier cancelled Notice No. 8 and issued Notice No. 9 abolishing Gang No. 11, and on the same date, Notice No. 10 advertising a Leading Signalman position and two Signalman positions on Gang No. 10. Claimant bid for and was awarded the Leading Signalman position. The claim was filed shortly afterwards, alleging a violation of Rule 41.

The question involved is whether the Lead Signalman position covered **relatively the same class of work** as the Signal Foreman position. The Organization argues that supervising 3 or 4 employees is relatively the same class of work as supervising seven since both involve supervision and the attendant "paper" work.

The Agreement does not define what is meant by "relatively the same class of work." There are, of course, distinctions between the positions of Leading Signalman and Signal Foreman. Each is in a separate seniority class, the Signal Foreman being in Class 2 and the Leading Signalman in Class 3 where it is bracketed with Signal Inspectors, Assistant Signal Shop Foreman and others. Rule 2 defines a Signal Foreman as follows:

"An employee who is assigned to the duties of supervising the work of other employees, and who is not required to regularly perform the work over which he has supervision."

Rule 4 defines a Leading Signalman as follows:

"A Signalman or signal maintainer working with and supervising the work of one or more signalmen or signal maintainers with or without their assistants and/or helpers."

"In gangs not under the jurisdiction of a signal foreman, a leading signalman or leading signal maintainer shall not be required to lead and/or direct the work of more than three (3) employes exclusive of himself, except for temporary periods not exceeding ninety (90) calendar days in a calendar year, during which he shall not be required to lead and/or direct the work of more than four (4) employes exclusive of himself."

Thus, the Agreement, itself, shows that the parties noted that the Signal Foreman is mainly supervisory, while the Leading Signalman is only partly supervisory. The distinction they agreed upon was a numerical one, the number to be supervised.

Such distinctions in the Agreement raise serious doubt that the parties would have considered the two positions "relatively the same class of work." Even though the Carrier seems to have had reservations, itself, about whether Rule 41 was being violated when it revoked Notice No. 8, its purpose was to set up a reduced gang within the framework of the Agreement because of a reduced work load. Carrier is obliged to operate its road in an efficient manner and its right to abolish jobs and rearrange duties is generally recognized unless the agreement is violated thereby.

Since the Agreement regards the two positions as being in different seniority classes, having different duties and different pay rates and, finally, numerically expressed differences in supervision, we cannot say that the Petitioner has sustained its burden of proving a violation of Rule 41 merely by noting that both do supervisory work.

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 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 2nd day of June 1966.

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