

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
UNION RAILROAD COMPANY**

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

(a) The Company violated the current agreement, as amended, particularly the Scope, when it did not relieve the regularly assigned Signal Maintainer (2nd Turn) at Bessemer Enginehouse on August 28 and 29, 1962, when the incumbent was off account of illness. This is a seven (7) day position which has always been properly relieved by a relief man, and vacancies of this sort have always been filled.

(b) Thomas Leddy, the Vacation Relief and Vacancies man, be paid sixteen (16) hours' pay at the rate of \$2.7352, the prevailing pro rata rate of the position concerned on the dates cited above.

EMPLOYEES' STATEMENT OF FACTS: This dispute is a result of the Carrier's failure to properly relieve the seven-day position of Signal Maintainer (2nd Turn) at Bessemer Enginehouse, when the incumbent of that position, Mr. Frank Bobnar, was off account of illness on August 28 and 29, 1962.

Mr. Bobnar's position is described in Carrier's Bulletin No. 73, dated August 20, 1962, and is identified as (c) Signalman therein. Bulletin No. 73 is Brotherhood's Exhibit No. 1. It can be seen that he is regularly assigned to work from 4:00 P. M. to 12:00 midnight Saturday to Wednesday with Thursday and Friday as relief days.

This position is relieved on Thursday and Friday by the occupant of (b) Signalman position also shown on Bulletin No. 73. At all other times, relief is furnished by the employe holding the position of Signalman, Vacation Relief or Vacancies, the duties and assignment of which are described in Bulletin No. 61 dated April 30, 1962. This bulletin is Brotherhood's Exhibit No. 2. On the dates in question this position was held by Thomas J. Leddy, the Claimant here.

Prior to the instant dispute the position had always been filled when the regular employe was off account of illness or for personal reasons.

The initial claim on behalf of Mr. Thomas J. Leddy for sixteen (16) hours' pay at the pro rata rate of \$2.7352 per hour was filed by General Chairman George Petkus in his letter of September 28, 1962, addressed to

one was assigned to work Mr. Bobnar's assignment on August 28 and 29, 1962. August 30 and 31 were Mr. Bobnar's regular swipe days and as a result, the regular swipe man, W. Jackson, filled the assignment. From September 1 until September 14, 1962, Mr. Leddy, claimant, was assigned to fill the assignment. On September 15, 1962, Mr. Bobnar returned to his regular assignment.

In a letter dated September 28, 1962, Mr. G. Petkus, General Chairman of the Brotherhood of Railroad Signalmen, filed a grievance in behalf of Claimant, T. Leddy, contending that the Carrier violated the agreement when it did not fill Mr. Bobnar's assignment on August 28 and 29, 1962. (See Carrier's Exhibit "B").

This grievance was progressed under the grievance procedure between the parties. It was finally declined by the Assistant to Vice President and General Manager by letter dated December 17, 1962 (See Carrier's Exhibit "C").

As the Carrier understands the Employees' claim, they are contending that it is a violation of the agreement to blank 7 day assignments when an employe marks off account of illness. The employes further contend that these types of vacancies (when an employe reports off account of illness) have always been filled in the past.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant is regularly assigned as signalman on an advertised position of "Vacation Relief or Vacancies." There are no assigned rest days allocated to this position. When this position is not assigned on vacation relief work or vacancies, the occupant is worked in the signal gang.

The instant dispute arose out of the following circumstances:

On the afternoon of August 27, 1962, Frank Bobnar, the regularly assigned signalman at "MO" Tower, 4:00 P. M. to 12:00 P. M. turn, with relief days of Thursday and Friday, reported off account of illness. Thereupon, the Claimant was assigned to work the position, necessitating his being doubled through. That same evening, while working said assignment, the Claimant was notified to report the following morning, August 28, to his regular assignment in the signal gang.

Thereafter, the Carrier decided to blank Bobnar's assignment on August 28 and 29, 1962. On August 30 and 31, the regular swipe man filled the assignment; and from September 1 through September 14, the Claimant was assigned to the job until Bobnar's return.

Thus, the instant claim by the Organization is predicted upon the failure of the Carrier to permit the Claimant to work Bobnar's assignment on August 28 and 29, 1962.

In support of its position, the Organization urges that inasmuch as Bobnar's assignment was a seven-day position, the Carrier violated the effective Agreement when it blanked said assignment on the two days in question, both under the Scope Rule, particularly paragraph (b), and the Forty-Hour Week Agreement.

The Carrier, on the other hand, contends that in the absence of a specific provision in the Agreement prescribing such right, it may blank a position —

even a seven-day one — temporarily, when an employee reports off account of illness.

The issue to be decided herein, therefore, presents the question whether the Carrier, under the Agreement herein, may blank a position for two days when the regularly assigned employee is not available for service.

The Scope Rule provides as follows:

"RULE No. 1
Scope

(Paragraph (a) revised effective January 1, 1955)

(a) This agreement governs rates of pay, hours of service and working conditions of employes engaged in the construction, repair, reconditioning, inspection, testing and maintenance of all signals, interlocking plants, centralized traffic control systems, car retarder systems, highway crossing protection signals, bonding of track for signal and interlocking purposes, and such other work as has been generally recognized as Signal Department work on the Union Railroad.

(b) This scope rule is predicated upon conditions and practices which have been in effect on this property. It is not intended to give the signalmen under this agreement the exclusive right to any additional work nor is it intended to take away from signal forces covered by this agreement any work which they have heretofore generally performed, as covered by Memorandum Agreement dated October 1, 1950.

(Paragraph (c) revised August 31, 1955)

(c) The position of foreman, signal foreman, chief inspector, signal inspector, office engineer, and employes assigned to any of these positions shall be subject only to the following provisions of this agreement:

Rules 8, 9, 10, 15, 16, 17 (a), 18, 19, 20, 21, 23 and 24.

Memorandum of Understanding Effective October 1, 1950:

It is the intent of the scope rule and it is understood and agreed by both parties that the railroad may continue to employ outside contractors or use employes not coming within the scope of this agreement to perform any of the work set out in the scope rule, consistent with the established practice on this railroad. The performance of any work by contractors, or employes not coming within the scope of this agreement, as set out in the scope rule, will not entitle any Signal Department employee to any additional or penalty payment."

It is manifest that the Scope Rule is designed to prevent other crafts from performing work under the jurisdiction of this Organization. Inasmuch as the Carrier blanked Bobnar's assignment on the two days in question, no other employes nor any other craft performed any of the duties involved on this

assignment. We find it difficult, therefore, to be swayed by the dubious argument that the Carrier violated the Scope Rule herein.

The Organization further argues that the past practice under the Scope Rule has been to fill seven-day positions when the regular employe was absent. In refuting this argument, the Carrier cites three occasions involving the Claimant herein, when he was regularly assigned at the retarder position. On specified dates, he marked off account of illness and though there was a vacation relief or vacancy employe available, the car retarder position was blanked on those days. Thus, it appears to us that the practice under this Rule does not support the Organization either.

The next question is whether the Forty-Hour Week Agreement prohibits the temporary blanking or a seven-day position? In this respect, both parties cite Award No. 5589 by Referee Robertson, in support of their position. We believe that a careful review of the above-mentioned Award is dispositive of the issue. However, in our opinion, it favors the Carrier and not the Organization.

Under the facts present herein, we repeat, this assignment was only blanked two days; and, therefore, our determination is predicated on this factor. We are not presuming to decide an extraneous or theoretical issue — namely the blanking of this assignment for the entire period that Bobnar was absent. Since this did not occur, we are specifically confining our determination to the circumstances prevalent herein, i.e., blanking the job for two days while the regular employe was absent.

Hence, we find pertinent the following language by Referee Robertson in Award No. 5589, and we quote a portion thereof:

“* * * To go further and say that where such employes do not report for duty, Carrier must work other regularly assigned employes or relief men either on rest days or by doubling over on an overtime basis, in our opinion would be legislating for the parties * * *”

Furthermore, numerous Awards of this Board have held that in the absence of a specific prohibition, the Carrier may, in good faith, blank a position. (See Awards 14195 and 14252).

Thus, it is the considered opinion of this Board that under the circumstances prevalent herein, as well as the collective bargaining agreement, that the Organization is displaying needless apprehension. Undoubtedly, it is concerned that the Carrier may utilize the instant situation as a pretext to heedlessly blank seven-day assignments. It appears to us, however, that the Carrier acted in good faith when it blanked this assignment for two days during the absence of the regular employe.

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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as amended 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. Schuly
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1966.