

Award No. 14760
Docket No. SG-14500

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

NEW YORK CENTRAL RAILROAD—SOUTHERN DISTRICT

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the New York Central Railroad Company (Lines West of Buffalo) that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 2(a), on September 13, 1962, and subsequent dates, when it assigned Leading Maintainer B. L. Schuck, headquartered at Marion, Indiana, to work alone in the performance of work which is regularly assigned to employees classified in Rule 2(c).

(b) The Carrier be required to compensate Signal Maintainer R. W. Hartsock, headquartered at Marion, Indiana, for eight (8) hours at his punitive rate for September 13, 1962.

(c) The Carrier be required to additionally compensate Signal Maintainer R. W. Hartsock at the punitive rate for an amount of time equal to that which Leading Maintainer B. L. Schuck works alone either during or outside his regularly scheduled assignment from September 13, 1962, until the violation described in (a) above is discontinued.

EMPLOYEES' STATEMENT OF FACTS: This dispute is an indirect result of Carrier making material changes in the maintenance positions between M. P. 58 and M. P. 180 on the Michigan Division. Previous to September 10, 1962, this territory was divided into three (3) sections and assigned as follows:

Section No.	Headquarters	Territorial Limits	Incumbent
525	Claypool, Indiana	M.P. 58 - M.P. 117	C. F. Shoemaker
526	Marion, Indiana	M.P. 117 - M.P. 152	R. W. Hartsock
527	Anderson, Indiana	M.P. 152 - M.P. 180	B. L. Schuck

On August 28, 1962, Mr. R. E. Tomlin, Signal Supervisor, issued Bulletin No. 24 (File: 110-11) which accomplished the following:

1. Abolish Signal Maintainer C. F. Shoemaker's position on Section 525 at Claypool, Indiana. Job No. M-26.

There is an agreement between the parties to this dispute bearing an effective date of March 1, 1951, as amended, and including the National Agreement of August 21, 1954, which by reference thereto is made a part of the record in this dispute. (Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: There is in full force and effect an Agreement between the parties hereto, effective March 1, 1951, copy of which Agreement is on file in the offices of the Third Division. Contained in this Agreement is Rule 2—Classification—of which paragraphs (a) and (c) are pertinent to the claim being progressed:

“(a) **LEADING SIGNAL MAINTAINER:** An employe working with and assigned supervision of the work of one or more signal maintainers with their Assistants and or Helpers.”

“(c) **SIGNAL MAINTAINER OR SIGNAL MECHANIC:** An employe qualified and assigned to perform work generally recognized as signal work.”

Claimant R. W. Hartsock established Signal Department seniority on October 31, 1938, when he was employed as Signal Helper in Gang No. 541 at Indianapolis, Indiana. Claimant has held continuous employment since that date, and in addition to service as a Signal Helper, he has worked as Assistant Signal Maintainer, Signaller and Leading Signaller in Signal Gangs, Signal Maintainer, Leading Signal Maintainer and Signal Gang Foreman at various points on this Carrier. In the positions of Signal Maintainer, Leading Signal Maintainer and Signal Gang Foreman he has been responsible for the supervision of other employes, inspection, adjustment and proper maintenance of signals and interlocking plants, flash-light crossing protection, as well as the preparation of reports and handling of tools, material and supplies necessary in the signal work he was required to perform.

Since March 2, 1953, with the exception of a two-month period—September 16, 1954—November 15, 1954, Claimant has worked as Signal Maintainer with headquarters at Marion, Indiana. In this position he performs the various Signal Department maintenance functions, as heretofore listed, on the territory Goshen, Indiana south to Anderson, Indiana—a distance of approximately 110 miles.

Also assigned on this same territory, with headquarters at Marion, Indiana, is Leading Signal Maintainer B. L. Schuck, who, in addition to performing the various Signal Department maintenance work, supervises the activities of Claimant Hartsock and is responsible for the proper maintenance and repair of the signal apparatus in the territory.

Claim here is progressed on the basis that Mr. Schuck, as Leading Signal Maintainer, must be accompanied at all times when on duty by, at least, one Signal Maintainer, which in this case would be Claimant Hartsock, the only Signal Maintainer assigned on this particular territory, notwithstanding he was on duty and under pay on claim dates.

OPINION OF BOARD: This claim resulted from Carrier making changes in maintenance positions between M.P. 58 and M.P. 180 on the Michigan Division. Prior to September 10, 1962, this territory was divided into three (3) sections and were assigned to employes Shoemaker, Hartsock and Schuck

respectively. On August 28, 1962, Carrier issued a bulletin which abolished Shoemaker's position; abolished Schuck's position; consolidated the three former maintenance sections into one (Section 526); and advertised a new position, Job No. M-78, which was a Leading Signal Maintainer with assigned hours, days off duty, and territory the same as Signal Maintainer Hartsock on Section 526. The new Leading Signal Maintainer's position was assigned to B. L. Schuck. This action had the effect of consolidating three maintenance sections into one, and of reducing the maintenance force on this territory from three to two employees. Prior to September 10, 1962 there had not been a position of Leading Maintainer assigned to this territory. It appears from the record that the newly formed maintenance gang (Leader Schuck and Maintainer Hartsock) worked together and in the presence of one another at all times, at the outset. However, on the fourth day (September 13, 1962) Leading Maintainer Schuck instructed Maintainer Hartsock that he was to perform certain work on one part of the territory while Schuck went in the opposite direction and performed another job by himself. After that, they worked together on some days—and on others separately and alone.

Claimant contends that Carrier violated the agreement by assigning Leading Maintainer Schuck to work alone. For this alleged violation, Claimant Hartsock makes claim for eight hours at the punitive rate and additional compensation at the punitive rate for an amount of time equal to that which Leading Maintainer Schuck works alone from September 13, 1962 until the violation is discontinued.

The rules pertinent to this dispute are:

"RULE 2.

(a) **LEADING SIGNAL MAINTAINER:** An employe working with and assigned supervision of the work of one or more signal maintainers with their Assistants and or Helpers.

(b) **LEADING SIGNAL MECHANIC:** An employe assigned to work with (but not necessarily at all times in the presence of) and supervise the work of not more than five employes, except that when a Gang Foreman is in immediate charge the limitation of five employes will not apply.

(c) **SIGNAL MAINTAINER OR SIGNAL MECHANIC:** An employe qualified and assigned to perform work generally recognized as signal work.

(d) **ASSISTANT SIGNAL MAINTAINER OR ASSISTANT SIGNAL MECHANIC:** An employe in training for position of Signal Maintainer or Signal Mechanic and assigned to work with (but not necessarily at all times in the presence of) and under the direction of an employe of higher classification."

Carrier contends that Rule 2(a) contemplates only that the Signal Maintainer is under the general direction of the Leading Signal Maintainer; that the Leading Signal Maintainer is not required by Rule 2(a) to be in continuous personal contact with the Signal Maintainer; and that the two classifications under Rule 2 (Leading Signal Maintainer and Signal Maintainer) serve only to determine rates of pay and supervisory authority.

Interpretation of rules similar to Rule 2 in prior awards compel this Board to accept Carrier's contention in this proceeding.

In Award No. 13819, this Board interpreted a rule similar to Rule 2(a) herein by stating:

"This Rule recognizes that a Leading Maintainer is not only a supervisor of Maintainers but is also a Maintainer himself, namely an employe who can perform this type of mechanical work. There is nothing in the Rule to prohibit a Leading Maintainer from doing Maintainer work if he is working alone. It is true that there are the two separate classifications, Leading Maintainer, and Maintainer, but these classifications serve to determine rates of pay and do not preclude the Leading Maintainer from performing Maintainer work if he is without helpers."

Again in Award No. 12536 it was set out that the existence of a Leading Signal Maintainer did not per se compel the assignment to his complement of a Signal Maintainer.

Award No. 14007 followed Award No. 13819 (supra) and cited Award No. 12536 when it ruled that a Carrier may properly call upon a Leading Maintainer to perform the work without the assistance of a Maintainer.

Rule 2(a) herein serves to the rate of pay and imposes supervisory responsibility upon the Leading Maintainer. It does not preclude him from working out of the presence of other employes.

The record in the instant proceeding indicates that Claimant Hartsock was acting under the direction and supervision of Leading Maintainer Schuck even though they might be at opposite ends of the assigned territory. There is no denial by either of the parties that the responsibility of the assigned territory was in the lap of Leading Maintainer Schuck.

We do not agree that conceptually the term "supervision" requires "geographic adjacency" in the sense stressed by the Organization (Awards 6582 and 5830).

There is no showing that the Claimant suffered any monetary loss or that his work was hampered because of lack of physical proximity to the Leading Maintainer.

This claim should be denied.

For the reason that this issue has been resolved on the question of the right of a Leading Maintainer to work alone, the issues of practice, damages, and continuing violation are moot and will not be discussed in this award.

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 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 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 22nd day of September, 1966.

DISSENT TO AWARD NO. 14760
DOCKET NO. SG-14500

Award No. 14760 is palpable error. The Majority, in order to reach their decision, have read the primary paragraph of the controlling rule in a vacuum and then, and then only, found comfort in Awards pertaining to other parties and their distinguishable agreements. The present parties found it necessary to explain their intent in paragraphs (b) and (d) of the confronting Rule 2 in order to obtain that which the Majority here grants carrier in paragraph (a). Clearly, had the parties intended that the Majority's interpretation be applied to paragraph (a) as it is now written, their explanation in paragraphs (b) and (d) would not have been necessary. The Majority has placed the parties in the posture of having performed a useless act in controvention of our holdings in Awards 5492 and 6723.

Award No. 14760 being palpable error, I dissent.

/s/ W. W. Altus