



Award No. 15542
Docket No. SG-15490

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

NEW ORLEANS PUBLIC BELT RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the New Orleans Public Belt Railroad that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope and Rules 101, 103, 104, 108, 505, 905, 911 and 913, when it required and/or permitted an employe not covered by that agreement to assist Testman-Foreman Ned Dufrene in making signal tests for ten (10) hours each day April 18 and 19, 1964, and for eight (8) hours each day April 20, 21, 22, 23, 25, 26, 27 and 28, 1964.

(b) Carrier be required to compensate Mr. Dufrene at his overtime rate of pay for the amount of time listed above.

(c) Carrier also be required to compensate Mr. Dufrene at his overtime rate of pay for any and all actual time worked subsequent to the above dates by other than signal employes in the performance of signal work in violation of the Signalmen's Agreement.
[Carrier's File: 013.1]

EMPLOYEES' STATEMENT OF FACTS: The parties to this dispute entered into an agreement governing hours of service, working conditions and rates of pay, effective January 16, 1963. By reference thereto, that agreement is made a part of the record herein.

While the agreement includes five classifications (Testman-Foreman, Leading Signal Maintainer, Signal Maintainer, Assistant, and Signal Helper), it was understood (Agreement Rule 108) that Carrier (total trackage 172 miles) would employ only two classes of signal employes, Testman-Foreman and Assistant, as of the effective date of the agreement.

Under date of January 15, 1963, it was agreed that instead of bulletining positions, Mr. Ned J. Dufrene would be assigned as Testman-Foreman at the rate of \$3.16 per hour, and Mr. Merlin J. Klotz would be assigned as Assistant at the rate of \$2.63 per hour, both assignments effective as of January 16, 1963.

Bagnetto, account emotional strain. On June 9, 1964, Mr. E. L. Mire, Assistant General Manager, wrote Mr. Dufrene instructing him to report promptly to Carrier's Physician, Dr. M. C. Greenleaf, in order that he could advise us of Mr. Dufrene's physical condition and probable length of time he would be off sick. In lieu of reporting to the company physician Mr. Dufrene elected to submit his resignation.

The Organization further alleges that Carrier violated Rule 505 of the agreement when it failed to bulletin the vacancy created by the resignation of Assistant Maintainer M. J. Klotz on October 10, 1963. Rule 505 of the agreement reads as follows:

"Rule 505. New positions or vacancies except in the helper class shall be bulletined within fifteen calendar days prior to or five calendar days following the date such positions are created or vacancies occur.

Assignments will be made after bulletin notice has been posted for a period of five calendar days and a copy issued to the General Chairman, during which time the employees may file their applications with the official whose name appears on the bulletin. The appointment will be made and the name of the successful applicant announced within a period of five calendar days from the posting of the bulletin.

Transfer of successful applicants to new assignments will be made within five calendar days after close of assignment bulletin."

No exception was taken to Carrier not bulletining this assignment, which was vacated on October 10, 1963, until May 5, 1964, the date of the initial claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Paragraph (h) of the Scope Rule provides:

". . . No employees, other than those coming within the scope of this agreement will be required or permitted to perform any of the above work, except such labor as is required and requested by Signal Employees for short periods of time to assist employees in the Signal Department."

In the case before us Carrier assigned an employee not covered by the Agreement to assist a covered employee for eight days. The labor was required and assistance was requested by the signal employee. The issue is whether eight days was a short period within the contemplation of the exception prescribed in paragraph (h) of the Scope Rule.

The record contains no evidence from which we can resolve the issue. We, consequently, must dismiss the Claim for lack of proof.

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 Claim must be dismissed for lack of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of May 1967.