

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ILLINOIS CENTRAL RAILROAD COMPANY

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

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 418, when it transferred an Iowa East Division Signal Gang to the Springfield Division to perform work in connection with relocating highway crossing signals at North Galena Avenue, Dixon, Illinois, on or about June 5, 6 and 26, 1962.

(b) The Carrier be required to compensate the following Springfield Division signal employees for time spent by the Iowa East Division Signal Gang employees in performing the work cited in paragraph (a):

F. E. Carroll - Foreman
C. F. Uchtman - Signalman
C. L. Weatherholt - Signalman
J. R. Tate - Signalman
Gary Garrett - Assistant Signalman
K. D. Osterbur - Assistant Signalman
C. G. Carl - Assistant Signalman

[Carrier's File: 135-842-97 Spl. Case No. 170 Sig.]

EMPLOYEES' STATEMENT OF FACTS: Signal employees represented by this organization have two basic types of seniority rights—(1) system and (2) district. Under an agreement that has system seniority, the employees may hold positions and perform work on the entire railroad. Under the district seniority principle, the employees may only hold positions and perform work on the particular district on which they hold seniority.

Under Rule 404 of the current Signalmen's Agreement in effect on this railroad, employees hold district seniority. However, Rule 418 does provide that a signal gang may be temporarily transferred from its "home" seniority district under certain circumstances.

OPINION OF BOARD: The instant claim arose out of Carrier's transfer of an Iowa East Division Signal Gang to Carrier's Springfield Division to perform work on June 5, 6 and 26, 1962. The work performed by them consisted of relocating two existing flashing light signals (highway crossing protective devices) and installing two such signals in a median strip of a highway which was being widened. Each member of the transferred signal gang agreed in writing as required by Rule 418 of the applicable Agreement between the parties.

Petitioner contends that the Iowa East Division Signal Gang was not properly transferred within the exception concerning temporary transfers contained in Rule 418 of the Agreement because the Gang did not actually assist "in a large signal construction program in progress", but merely worked for three days on a "small isolated project" over 100 miles from where the "home" gang was working. Moreover, Petitioner asserts that the Iowa Gang was working on highway crossing signals, whereas the Springfield Gang, the Claimants herein, was respacing block signals at another location, a completely different and unrelated type of activity.

Carrier contends that it properly assigned the automatic highway crossing work to the Iowa East Division Signal Gang because the Springfield Division had been continuously working for many months on essential signal construction work at Clinton, Illinois. Carrier declares that such temporary transfer of employees from one seniority district to another to assist in construction work was in accordance with the intent and purpose of Rule 418 of the Agreement. Carrier primarily relies on past practice and our Awards 13092, 14200 and 14201 as authority for the disputed transfer of work.

The second sentence of Rule 418 contains the pertinent language of the Agreement, and provides as follows:

"However, during a large signal construction program a signal gang may be temporarily transferred from its seniority district to the district on which the work is in progress to assist in the construction program when a majority of the employees in such gang agree in writing to such temporary transfer, copy of which will be furnished the General Chairman by the Signal Supervisor."

The gravamen of Petitioner's position is that the above provision was never intended to be used except in situations where large construction projects are involved, such as CTC installations. However, no definition of the term "large construction program" is found either in the Agreement or in prior Awards of this Board. Moreover, a careful examination of record fails to resolve the patent ambiguity implicit in the term. Both parties have stated their respective positions without equivocation, but have furnished little or no competent evidence to support either construction of the applicable language of the Agreement.

Carrier asserts that the transferred signal gang assisted in the large construction program in progress on the Springfield Division by performing work on a particular project which otherwise could not have been completed without interrupting work being performed by the Springfield Division employees on said construction program. Petitioner narrowly construes the applicable language of the Agreement and asserts that the Iowa East Division Gang did not actually assist in the construction program in progress because it merely worked on an isolated project, completely unrelated

to the other work. Moreover, Petitioner contends that no large construction program was in progress on the Springfield Division.

A careful examination and comparison of the record in the instant case with the record of the dispute involved in our earlier Award 13092 requires a finding that the same pivotal issue is involved in each case, except that here we have no question concerning written notice which was determinative in the earlier case. Accordingly, we again affirm the well established principle that the complaining party has the burden of proving that the Agreement has been violated. We are confronted with conflicting assertions with respect to the proper construction of the applicable language of the Agreement. Petitioner has failed to show through probative evidence either that a "large construction program" was not "in progress" on the Springfield Division or that the Claimants herein were not assisted by the Iowa East Division Signal Gang in such construction program.

Accordingly, we find our earlier Award 13092 controlling in the instant dispute and that the Claim must be denied.

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 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 16th day of June 1967.