

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CENTRAL OF GEORGIA RAILWAY COMPANY

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

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly the Memorandum of Understanding of July 1, 1950, and Supplemental Agreement effective June 1, 1955, when it failed and/or refused to fill the vacancy of second trick Signal Maintainer at Macon Junction Interlocking while the incumbent, Mr. R. H. Varner, was absent beginning December 9, 1963.

(b) Carrier be required to compensate Assistant Signalman O. E. Kitchings the difference between his regular rate of pay as an Assistant Signalman and that of Signal Maintainer, from December 9, 1963 until the return of Mr. R. H. Varner to his regular assignment as Signal Maintainer-Macon Junction Interlocking-following his vacation period which began December 9, 1963, or during the period the second trick is not filled while the regular assignee is off duty.

[Carrier's File: SIG 480]

EMPLOYES' STATEMENT OF FACTS: This dispute arose because Carrier blanked and did not fill the vacancy created at Macon Junction Interlocking beginning December 9, 1963, when Mr. R. H. Varner took his ten (10) day vacation.

Carrier's action caused violations of the July 1, 1950 Memorandum of Understanding with Respect to an Operational Problem at Macon Junction Interlocking and the June 1, 1955 Supplemental Agreement to occur. These have been reproduced and are identified as Brotherhood's Exhibit Nos. 1 and 2, respectively. As a result of the violations, General Chairman E. C. Melton instituted claim on behalf of Mr. O. E. Kitchings, the senior Assistant Signalman working in the Signal Gang, for compensation amounting to the difference between what he was paid at the Assistant Signalman rate while working in the gang during the claim period and what he would have been paid if he had been assigned to fill the vacancy in accordance with the Memorandum and Supplemental Agreement.

The rules and working conditions agreement between the parties is effective July 1, 1950, as amended. Copies are on file with the Board, and the Agreement, as amended, is hereby made a part of this dispute as though reproduced herein word for word.

OPINION OF BOARD: Petitioner's claim alleges that Carrier violated the Agreement and the Memorandum of Understanding dated June 1, 1950 when it failed and refused to fill the vacancy of the second trick Signal Maintainer at the Macon Junction Interlocking with Claimant while the incumbent was on vacation. That position was allowed to remain unfilled. Petitioner particularly emphasizes the June 1, 1955 Supplemental Agreement and the July 1, 1950 "Memorandum of Understanding with Respect to an Operational Problem at Macon Junction Interlocking" which provide, among other things, that a second shift Signal Maintainer position will be employed Monday through Friday at Macon Junction Interlocking and that vacation relief work will be performed by Assistant Signalmen or Helpers in the signal gang.

Carrier has rejected the claim on the following grounds: 1) The claim is barred because the claim presented to this Board was not the same claim filed and handled on the property; and Petitioner's attempt to amend it should not be allowed; 2) Carrier was not required to fill the position because a vacancy did not exist under the terms of the National Vacation Agreement; 3) Even if a vacancy did exist, Claimant was not qualified to fill it; 4) Even if Claimant were qualified to fill it, he did not apply for the position; and 5) In any event, during the period in question, Claimant was working either as a Signalman or Leading Signalman and was paid as much or more, so that there was no "difference" of pay for which he should be compensated.

The pertinent provisions of the Agreements and Memorandum in question are set forth below:

"SUPPLEMENTAL AGREEMENT

"Effective June 1, 1955, vacation relief work will be performed by Assistant Signalman or Helper in the gang, or furloughed men if there is no gang working. The senior qualified man applying will be given preference for this work."

"NATIONAL VACATION AGREEMENT

Article 6: The carriers will provide vacation relief workers but the vacation system shall not be used as a device to make unnecessary jobs for other workers. Where a vacation relief worker is not needed in a given instance and if failure to provide a vacation relief worker does not burden those employees remaining on the job, or burden the employee after his return from vacation, the carrier shall not be required to provide such relief worker."

MEMORANDUM OF UNDERSTANDING WITH RESPECT TO AN OPERATIONAL PROBLEM AT MACON JUNCTION INTERLOCKING

It is agreed that to take care of the special condition at Macon Junction interlocking the following shall prevail.

Monday through Friday a first and second shift will be employed. Only one shift will be needed on Saturday and Sunday.

No relief men will be employed, but the present practice of dividing the overtime work will be continued. The man working Saturday and Sunday will cover all calls until his quitting time on the following Friday. All time worked on Saturday, Sunday or Holiday will be at the overtime rate. The time the second trick maintainer works on a Saturday, Sunday or Holiday may be the hours of the first trick."

Parenthetically, we should state that the "special condition" prevailing at the Macon Junction Interlocking is not revealed in the record.

Contrary to Petitioner's assertion that the Vacation Agreement and the Schedule Agreement are in conflict and that the later Schedule Agreement applies, the Board finds that the two agreements are not in conflict and may be construed together.

Under the terms of Article 6 of the National Vacation Agreement, Carrier has the right not to provide a vacation relief worker if he is not needed and if there is no burden on those employees remaining on the job. There is no evidence in the record to show that a relief worker was needed on the second trick or that the absence of such relief worker would burden the other employees. There is uncontroverted evidence that Carrier customarily blanked any position which was not necessary to fill while the incumbent was on vacation.

If the Carrier determines that a vacation relief worker is needed, then the June 1, 1955 Supplemental Agreement comes into play and specifies who will perform the vacation relief work. The two agreements, therefore, are complementary.

There is nothing in the Memorandum of Understanding which requires Carrier to provide a relief worker for the second trick Signal Maintainer position while the incumbent is on vacation.

After having determined that Carrier is not required to provide a relief worker under these circumstances, the remaining issues are moot.

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 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 and Memorandum of Understanding were not violated.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1967.

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