

Award No. 16161
Docket No. SG-16349

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**NEW YORK CENTRAL RAILROAD COMPANY,
EASTERN DISTRICT
(Except Boston and Albany Division)
AND NEW YORK DISTRICT**

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

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly Sections 7, 9 and 10, when, on or about November 11, 1963, it changed the rest days of the Signal Maintainer at SS "DB" from Saturday and Sunday, to Monday and Tuesday, eliminating a Relief Maintainer's position; thereby resulting in a Leading Signal Maintainer and an Assistant Signal Maintainer (now Signal Helper) working on Monday and Tuesday without the presence of a Signal Maintainer.

(b) Carrier be required to compensate Signal Helper D. H. Boyd at SS "DB" the difference between the Signal Helper pay he received and the Signal Maintainer pay, commencing 60 days prior to the initial date of the claim (January 11, 1965) and continuing so long as the violation continues.

(c) Carrier violated the current Signalmen's Agreement, as amended, particularly Section 18, when it changed the rest days of the SS "DB" Signal Maintainer from Saturday and Sunday, to Monday and Tuesday, beginning on or about November 11, 1963; thereby resulting in the Maintainer working on Saturdays and Sundays at the straight time rate of pay when his position was not relieved on Mondays and Tuesdays.

(d) Carrier be required to compensate Signal Maintainer R. D. Walker at SS "DB" for the straight time Signal Maintainer rate of pay for every Monday and Tuesday that a Leading Signal Maintainer and/or Signal Helper (formerly Assistant) work at SS "DB" without the presence of a Signal Maintainer; this claim to commence sixty days prior to the date of the initial claim (January 11, 1965) and continue so long as the violation continues.

(e) Carrier also be required to compensate Signal Maintainer R. D. Walker at SS "DB" for the overtime rate of pay for every Saturday and Sunday he works when his position is not filled on Monday and Tuesday; this claim to commence sixty days prior to the date of the initial claim (January 11, 1965) and continue as long as the violation continues.

EMPLOYEES' STATEMENT OF FACTS: This claim arose after Carrier eliminated a relief position, and changed the rest days of a Signal Maintainer, at SS "DB," Section 5, Electric Division, effective on or about November 11, 1963.

Prior to November 11, 1963, the first trick maintenance force at SS "DB" with a Monday through Friday work week, consisted of a leading Signal Maintainer, Signal Maintainer, and Assistant Signal Maintainer. A Relief Maintainer was assigned to rest day work.

On or about November 11, 1963, Carrier eliminated the relief position, changed the rest days of the Signal Maintainer from Saturday and Sunday to Monday and Tuesday, and assigned a Signal Helper in lieu of the Assistant. As a result, maintenance forces on duty at SS "DB" were as follows:

Monday: Leading Signal Maintainer and Signal Helper.

Tuesday: Leading Signal Maintainer and Signal Helper.

Wednesday: Leading Signal Maintainer, Signal Maintainer, and Signal Helper.

Thursday: Leading Signal Maintainer, Signal Maintainer, and Signal Helper.

Friday: Leading Signal Maintainer, Signal Maintainer, and Signal Helper.

Saturday: Signal Maintainer.

Sunday: Signal Maintainer.

This dispute involves two basic issues: (1) That the Signalmen's Agreement, particularly Sections 7, 8, 9 and 10, prohibit the assignment of a Leader and a Helper together without the presence of a Maintainer or Mechanic, and (2) That Section 18 prohibits the assignment of an employee to a work week with other than Saturday and Sunday as rest days unless there is a relief position assigned to fill the position on such rest days.

The Brotherhood protested these changes soon after they were made in 1963. That protest was handled up to and including the highest officer of the Carrier designated to handle such matters, with no corrective action by Carrier. As Carrier failed and/or refused to correct the situation, the Local Chairman filed the instant claim on January 11, 1965, with the monetary portion of the claim retroactive sixty days from that date. The claim was subsequently handled in the usual and proper manner on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement. Pertinent correspondence exchanged on the property is attached hereto as Brotherhood's Exhibit Nos. 1 through 5.

Signal maintenance in Sections 5 and 6 continued to be provided on a daily, 24 hour basis with second and third trick positions in Section 6 assigned to protect Section 5 territory in emergency during hours and days when no Section 5 positions were scheduled to work.

Carrier's Signal Supervisor received from the Local Chairman a grievance dated November 13, 1963, another dated December 8, 1963, and a claim and grievance dated January 11, 1965.

The first grievance was presented in behalf of Leading Signal Maintainer D. Capucci for working without a signal maintainer on Monday and Tuesday, November 11 and 12, 1963, allegedly in violation of Sections 7, 18 and 81 of the Signalmen's Agreement. The Signal Supervisor denied the grievance on November 20, 1963 following which the Organization progressed it through the appeals procedure on this property, up to and including the Carrier's highest appeals officer. Carrier's highest appeals officer denied the grievance on March 5, 1964 and reaffirmed his denial during a conference with the General Chairman held on September 4, 1964. Carrier has reproduced the exchange of correspondence as Carrier's Exhibit B.

The second grievance, dated December 8, 1963 by the Local Chairman, was presented in behalf of signal maintainer position No. 111, the Organization contending the days off duty should be Saturday and Sunday or a relief job established and that Carrier violated Section 18(f) of the Signalmen's Agreement. The signal supervisor denied this grievance on December 10, 1963, following which the Organization included it in the appeal handled up to and including Carrier's highest appeals officer and denied on March 5, 1964. Carrier has included the letters dated December 8 and 10, 1963 in Carrier's Exhibit B.

In the third claim and grievance presented by the Local Chairman in this case, the Local Chairman dated his letter January 11, 1965, advised the signal supervisor that his previous protest had been handled to and including Carrier's highest appeals officer, and filed a monetary claim for 60 days prior to the date of his January 11, 1965 letter, continuing until the alleged violation is corrected. Carrier's Signal Supervisor denied the claim on January 21, 1965, and the Organization thereafter appealed it up to and including Carrier's highest appeals officer. Carrier's highest appeals officer denied the claim on June 30, 1965 and reaffirmed his denial on December 28, 1965, following discussion in conference held December 3, 1965. Carrier has reproduced the General Chairman's letter of March 17, 1965 and denials by Carrier to the General Chairman as Carrier's Exhibit C.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier reorganized the signal maintenance forces in Sections 4, 5 and 6 effective November 6, 1963, abolishing certain positions and establishing others with changes in working and territorial limits. Carrier advertised the positions involved in a Bid Bulletin dated October 17, 1963, and awarded such positions by Awards Bulletin dated November 4, 1963. The evidence indicates that Carrier took no subsequent action for which a claim has been made in this case.

In a November 13, 1963 letter from the Local Chairman, a claim was made in behalf of Leading Signal Maintainer D. Capucci, for November 11 and 12, 1963, the first Monday and Tuesday he worked subsequent to the November 6, 1963 effective date of Position No. 111. In the December 8 letter, claim covered position No. 111, but no employees were identified. Grievances

were appealed up to and including Carrier's highest appeals officer within the prescribed time limits. Carrier submitted its denial on March 5, 1964. The Organization did not institute proceedings before this Division within 9 months. The grievance in behalf of Leading Signal Maintainer Capucci and in behalf of Signal Maintainer Position No. 111 is effectively barred.

Under letter dated January 11, 1965, the Local Chairman presented a new claim and listed employees as claimants who were not previously identified.

The Organization submits that the Carrier is in continuous violation of the Agreement and has progressed the claim filed January 11, 1965 contending that the claims were protected by the previous handling of its protest up to and including Carrier's highest appeals officer.

Carrier submits, however, that the claim was one, specific act which occurred on November 6, 1963 and that the claim does not conform to the provisions of Article V-3, as alleged. They further contend that the claim should have been presented to the Carrier within 60 days of the occurrence, but the Organization did not present such claim until January 11, 1965, and in so doing failed to conform to the provisions of Article V 1 (a).

In Award 14450 (Ives), it was stated:

"Recent awards of this Board consistently have held that the essential distinction between a continuing claim and a non-continuing claim is whether the alleged violation in dispute is repeated on more than one occasion or is a separate and definitive action which occurs on a particular date. (Award Nos. 12045 and 10532.) Here, the action complained of was the abolishment of the section gang, including the position of Section Foreman, with headquarters at Franklin, Missouri and the assignment of the territory to headquarters in Boonville, Missouri. It is undisputed that the abolishment and transfer of territory by Carrier occurred on or about July 21, 1958. Therefore, we find the Time Limit Rule is applicable as the claim was not filed within sixty days after the date of the occurrence upon which it is based. (Award Nos. 14131 and 12984.)"

We agree with the reasoning of the above cited opinion. We therefore conclude that the claim is not a continuing one, but was based on a specific act which occurred on a specific date, namely November 6, 1963. For the foregoing reasons, we will dismiss the claim.

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 should be dismissed.

AWARD

Claim dismissed.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of March 1968.

DISSENT TO AWARD 16161, DOCKET SG-16349

The Third Division has long held that it lacks authority to entertain issues not raised and handled on the property.

The author of this Award (16161) has so held on at least three occasions. In two of those cases he cited as authority National Disputes Committee Decision No. 5, wherein it was held that issues not raised prior to the filing of a Notice of Intent may not be raised before the Third Division.

In the instant case neither the issue upon which the claim is dismissed nor any other procedural issue was raised by Carrier prior to the Employees filing their Notice of Intent yet the Referee and the Carrier Members, for reasons undisclosed, deliberately elected to ignore that fact.

The Referee and the Carrier Members exceeded their authority under both the Railway Labor Act and the Board's Rules of Procedure when they dismissed the claim on grounds not properly before them. They have also knowingly given application to a double standard contrary to every principle of orderly procedure and good administration.

Award 16161 is invalid.

G. Orndorff
Labor Member