



Award No. 16731
Docket No. SG-17387

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David H. Brown, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District) that:

(a) Carrier violated and continues to violate the current Signalmen's Agreement, particularly Rules 4, 5, 6, 28 and 50, when it directed Signal Gang Foreman H. H. Parker: to assign an Assistant Signalman a relay test set for the purpose of testing relays; to assign two (2) Signal Helpers to assist in testing relays by posting results of tests on relay record cards; and failure of the Carrier to advertise one (1) signalman and two (2) assistant signalmen's positions to perform the foregoing work.

(b) Carrier now pay Assistant Signalman Frank Hardy the difference between the rate of pay he was paid as Assistant Signalman and that of Signalman for all hours assigned to test relays, for the violation cited in part (a).

(c) Carrier now pay Assistant Signalman Keith A. Cunningham the difference between the rate of pay he was paid as Assistant Signalman and that of Signalman for all hours assigned to test relays, for the violation cited in part (a).

(d) Carrier now pay Signal Helpers Frank Hardy, Eura V. Cotcamp and Kenneth R. Crowder the difference between the rate of pay each of them was paid as Signal Helper and that of Assistant Signalman for all hours assigned to assist in testing relays by posting results of tests on relay record cards, for the violation cited in part (a).

(e) Carrier now advertise one (1) Signalman and two (2) Assistant Signalmen's positions in accordance with the Signalmen's Agreement, particularly Rule 50.

EMPLOYES' STATEMENT OF FACTS: Claimants were members of a Division Signal Gang. Regular work days Monday through Friday, with Saturday and Sunday as rest days.

Helpers. The two Helpers were assigned to write down the data as called off to them by the Signalman and the Assistant.

The Assistant was worked in close proximity to the Signalman at all times, and the Helpers were worked directly with the Signalman and the Assistant, so that they could record the data as the Signalman and the Assistant took it from their testing equipment.

Foreman Parker was a fully skilled and trained Signalman before being promoted to Foreman, and it was the purpose for him to exercise the necessary general supervision over the work. It develops that Foreman Parker did exercise proper supervision over the work, because it has been brought out in the subsequent handling that he felt the Signalman and the Assistant were doing too much talking between themselves while doing this testing work. Parker stated that this was properly ironed out, and as this was something which in the Foreman's judgment was necessary for proper conduct of the work in a safe and efficient manner, there is no question but that the Foreman moved properly.

The work was carried to completion in this way in a manner fully satisfactory to the Carrier. Proper records were made in the manner set forth herein, and the Carrier's records with regard to testing relays on the particular territory are now in good shape.

Attached as Carrier's Exhibit 1 is letter which Local Chairman Parker addressed to the Carrier's Division Engineer at Ashland, Kentucky, asserting this grievance on November 23, 1966. Division Engineer Long's reply of December 9, 1966, is Carrier's Exhibit 2.

Appeal of this grievance to the Labor Relations Department was made by General Chairman Hughes' letter of February 7, 1967, which is Carrier's Exhibit 3. General Chairman Hughes' letter of February 7, 1967, supplementing or amending the appeal claim is Carrier's Exhibit 4.

The claim was discussed in conference with the General Chairman and Vice-President Gregg on March 2 and 3, 1967, and thereafter reply was made by the Carrier on March 10, 1967, which is Carrier's Exhibit 5.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim herein arose in connection with the testing of signal relays by certain members of a Signal Gang in charge of a Signal Foreman.

The record shows that one Signalman (Paul Cunningham) was sent to Covington, Kentucky, where Centralized Traffic Control panel was located. One of the Claimants (Keith Cunningham) was advanced from Assistant Signalman to Signalman. The Carrier states that Claimant Keith Cunningham was paid Signalman's rate for the period involved. Claimant Frank Hardy was advanced from Signal Helper to Assistant Signalman, and the Carrier states that he was paid at the Assistant Signalman's rate. Two helpers were used to write down on appropriate cards the results of the tests as dictated by those who did the actual testing.

The petitioner contends that Claimants Keith Cunningham and Frank Hardy were both engaged in testing relays, that they worked together for

about four days, at which time the Foreman separated the two men and thereafter they worked alone, under the direction of the Foreman.

In our opinion the record supports the position of the Petitioner that Claimant Frank Hardy was not working with and under the direction of a Signalman or Signal Maintainer in the testing of the relays. In the handling of the dispute on the property the General Chairman stated:

"Supervisor Armour told Foreman Parker to send Signalman Paul Cunningham to Covington, Kentucky, to work with them on the CTC machine; to promote Assistant Signalman Keith Cunningham to Signalman (vacancy when Signalman Paul Cunningham was sent to Covington); promote Signal Helper Frank Hardy to Assistant Signalman (Keith Cunningham's vacancy) and give each of them a relay test set, with the understanding that the Assistant would be working under the direction of the Signalman. Supervisor Armour also instructed Foreman Parker to use the Signal Helpers to fill out the record cards and that, he, Parker sign all of the test record cards. As to the Assistant working under the directions of the Signalman, Foreman Parker tried to follow the Supervisor's instructions but found after only a short time that the confusion that resulted with the Signalman going back and forth could only result in an error in testing and/or return of control wires to the relay, and Supervisor Armour was so notified. In addition, Foreman Parker notified the Supervisor that in accordance with the ICC rules the man making the test must sign the record cards and that was what happened, that is, the Signalman signed the cards for the relays he tested and, likewise the Assistant signed the cards for the relays he tested."

The record does not contain a specific rebuttal to the above statement, which indicates that the Assistant was separated from the Signalman, and that the Assistant signed for the relays tested by him in the same manner that the Signalman signed for those he tested.

Based upon the entire record the Board finds that Part (b) of the claim must be sustained and that Assistant Signalman Frank Hardy is entitled to the difference between the rate he was paid as Assistant Signalman and Signalman for all hours assigned to testing relays.

We do not, however, find any basis on the record and under the Agreement for Parts (a), (c), (d) and (e) of the claim. As heretofore indicated, Assistant Signalman Keith A. Cunningham, referred to in Part (c) of the claim, has, according to the Carrier, been paid at Signalman's rate for all hours assigned to test relays. Signal Helper Frank Hardy, referred to in Part (d) of the claim, has, according to the Carrier, been paid at Assistant Signalman's rate for the period involved, and, as we understand, is the same Claimant to whom Signalman's rate is being allowed under Part (b) of the claim. There is no Agreement support for pay at Assistant Signalman's rate for the helpers used to write down on appropriate cards the result of the tests. There is likewise no support based on the Agreement and the record for Part (e) of 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 Agreement was violated only as concerns Part (b) of the claim.

AWARD

Part (b) of claim sustained; remainder of claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1968.