

Award No. 16960
Docket No. SG-17420

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David H. Brown, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
THE WESTERN PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Western Pacific Railroad Company that:

(a) The Western Pacific Railroad Company violated the current Signalmen's Agreement, effective September 1, 1949 and reprinted July 1, 1961, including revisions, when it failed and/or declined to apply the Scope Rule and Rule 28 by assigning work covered by the Classification Rules of the Agreement on July 14, 15 and 16, 1966, at Winnemucca, Nevada.

(b) Mr. H. E. Aul, TCS Maintainer at Winnemucca, Nevada, be allowed eight (8) hours at the time and one-half rate of his position for July 14, 15 and 16, 1966, or a total of twenty-four (24) hours at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: This dispute arose because Carrier officials not classified in or covered by the Signalmen's Agreement performed signal work covered by the Scope of the Signalmen's Agreement. The disputed work was performed on July 14, 15 and 16, 1966, at Winnemucca, Nevada which is in the territory of TCS Maintainer H. E. Aul.

Under date of August 29, 1966, the Brotherhood's Local Chairman filed a claim on behalf of Mr. Aul for twenty-four (24) hours pay at the time and one-half rate of pay. It 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 satisfactory settlement. Pertinent exchange of correspondence on the property is attached hereto as Brotherhood's Exhibit Nos. 1 through 6.

There is an agreement in effect between the parties to this dispute bearing an effective date of September 1, 1949, reprinted July 1, 1961, as amended, which is by reference made a part of the record in this dispute.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Carrier's train operations on its main line, extending from Oakland, California, Mile Post 6, to Salt Lake City,

OPINION OF BOARD: The disputed work consisted of the installation of new equipment, in part, Frequency Shift Keying (FSK) apparatus, filters and associated relays, and the modification of existing signal circuits. Such equipment was not merely newly purchased, it was highly sophisticated and not of a type with which Claimant H. E. Aul was familiar.

Yet under the applicable agreement the only man on the job who could claim the work under the Scope Rule was Mr. Aul.

The work party making the installation consisted of Aul, Assistant to the Signal Engineer E. A. Thompson and Assistant Signal Supervisors R. R. Gifford and C. E. Bossen.

Three Chiefs and one Indian.

Carrier's defense was on the basis that Aul did most of the work under supervision of the other three men and that "Aul was found incapable of performing his duties without being instructed where to place each and every wire."

Again, under the Agreement Aul was the only man on the job who could claim title to the work. There is absolutely no showing that he was not as qualified as any Signal Maintainer working for Carrier was expected to be.

We re-affirm our decisions in Awards 12231, 14512 and 15595 wherein we recognized that proper supervision may include performance of some of the work being supervised, but we will not extend this principle to cover a case where three supervisors are active in a project employing only one workman.

We re-affirm the doctrine enunciated in our Awards 10932, 11142 and 11151 wherein we hold that one who would claim the right to perform work must first possess the qualifications necessary to do such work. In the instant case the first denial letter complained that Aul "was unable to properly interpret plans of new equipment which Mr. Aul had never seen before." (Emphasis ours.)

We believe that the training of personnel to handle new equipment is the joint responsibility of Carrier and employees. But the initiation must come from management. Only when management has discharged its training responsibility can it avail itself of defense against an untrained employee claiming work.

We search the record in vain for a showing of good faith on the part of Carrier. We find instead that they have not even given their workman a preview of the plans of the new installation, simply thrusting him into the project with three supervisors to watch him.

We are unable to find any indication that Carrier initiated this project with the slightest deference to the applicable agreement. The conclusion is inescapable that on this project Aul was demoted to helper and the three supervisors were intended as a major part of the work force.

The claim is sustained.

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.

AWARD

Claim sustained.

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

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 20th day of February 1969.

**CARRIER MEMBERS' DISSENT TO AWARD 16960
DOCKET SG-17420 (Referee Brown)**

The controlling agreement admittedly contains various provisions for a "training program"; but, contrary to the conclusions of the Referee and the Labor Members, we do not believe the evidence of record establishes that Management in this case failed to "discharge its training responsibility" under these provisions. Claimant was clearly not qualified to perform the involved work and therefore he had no right to perform it under the well established rule (accepted by the Referee and the Labor Members in this case) that "one who would claim the right to perform work must first possess the qualifications necessary to do such work."

**G. L. Naylor
R. E. Black
P. C. Carter
W. B. Jones
G. C. White**