



Award Number 17605

Docket Number SG-18246

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Gladden, 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 the current Signalmen's Agreement, in particular Rules 24 and 25, and also past practice, when it used Assistant Signal Maintainer T. E. Hancock outside of regular assigned hours on January 4, 1968, when at this time senior employe Hal Harlow, Signal Maintainer, was available and would have responded had he been called.
- (b) Carrier now be required to compensate Signal Maintainer Hal Harlow, at his applicable overtime rate of pay, in the comparable amount of time that Carrier used the junior employes (3 hours and 15 minutes) as cited in part (a) of this claim. (Carrier's 1-SG-264)

EMPLOYES' STATEMENT OF FACTS: The Carrier has headquartered at Allen, Ky. a signal maintenance group (gang) consisting of five (5) Signal Department employes assigned to the maintenance of a section of its signals. On January 4, 1968 the Carrier called Leading Maintainer I. W. McCormick and Assistant Signal Maintainer T. E. Hancock of this group to perform 3 hours and 15 minutes work outside of regular work hours. Signal Maintainer Hal Harlow (Claimant) was not called even though he was both the second senior employe in the group (McCormick being senior) and employed as a Signal Maintainer. Harlow was available and would have responded had he been called.

This claim was initiated by the Brotherhood's Local Chairman on January 23, 1968, and handled on the property in the usual and proper manner, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement (Brotherhood's Exhibits Nos. 1 through 6).

There is an agreement in effect between the parties to this dispute bearing an effective date of August 16, 1946, as amended, which is by reference made a part of the record in this dispute. Pertinent to this dispute are:

In the particular instance giving rise to this claim, Leading Maintainer McCormick was called in proper manner at 10:45 P.M. on January 4, 1968. McCormick learned what the reported trouble was, and concluded that he should have the help of an assistant in hunting down and correcting the trouble. T. E. Hancock was the senior assistant on the particular maintenance group, and in accordance with the seniority arrangement entered into with the employe representatives, Hancock was called and used, being paid an assistant the same amount of time paid to the leading maintainer for the performance of such work.

McCormick knew by the reported trouble what he had to look for. He would have to examine the bond wires between each of the rails in this section of track and examine track switches in this circuit to see what was causing the trouble. The bond wires are, of course, on the rails in both sides of the track, and McCormick's reasoning was that with the assistant with him one could watch one side of the track while the other watched the opposite side of the track, both walking together, along the track.

The Carrier's log record shows that what McCormick found in this instance were several mashed bond wires in Circuit 11 which brought about the trouble. While on this same call, these men took care of a broken rail and did the necessary signal work in connection therewith.

No question was raised in handling on the property with regard to payment of McCormick and Hancock for the work they performed. The question presented is the claim that McCormick should not have called and used Hancock, but was obligated to call and use the second senior maintainer (Harlow). No further discussion will here be made on this point in the interest of keeping this brief within reasonable bounds, and consideration can now move to the Carrier's position in this case.

(Exhibits Not Reproduced)

OPINION OF BOARD: This claim arises from the Carrier calling an "Assistant Signal Maintainer" to do overtime work when Claimant was available and who was the next Senior Signal Maintainer at the time the "Assistant Signal Maintainer" was called.

The pertinent parts of the rules of the controlling agreement are as follows:

"Rule 25—Work Outside of Assigned Hours

Employees assigned to or filling vacancies on maintainer positions will notify the person designated by the management where they may be called and will respond promptly when called. If they are needed for work outside of regular assigned hours, the maintainer on whose territory the work is required will be called first. If not available, another qualified employee will be called. . . ."

"Rule 5—Assistant Signalmen, Assistant Signal Maintainers

(a) Assistant Signalmen, Assistant Signal Maintainers: An employee in training for a position of signalman or signal maintainer, working with and under the direction of a signalmen or signal maintainer, shall be classified as an assistant signalman or assistant signal maintainer."

Rule 25 was adopted by the parties at a time when signal maintenance was done by a single signal maintainer (with such assistants or helpers as necessary) to maintain short sections or territories. Since the adoption of this language, however, the procedure was changed to so-called "group maintenance" where more than one signal maintainer (and assistants and helpers as are necessary) are used to maintain larger territories. In the instant situation, the leading signal maintainer was called to correct trouble on the Claimant's territory, as was the Senior "Assistant Signal Maintainer". Claimant contends that the Carrier violated Rule 25 when it failed to call him rather than the "Assistant Signal Maintainer".

There is nothing in Rule 25 which establishes the procedure for calling additional signal maintainers from the "group" inasmuch as group maintenance did not exist at the time of adoption of the Rule.

There is nothing in Rule 5 which restricts Assistant Signal Maintainers to performing work during regular working hours. The only restriction is that such work be performed ". . . . with and under the direction of a signalman or signal maintainer. . . ."

"The Board finds that in the absence of restricting provisions in the Agreement, Carrier did not exceed its authority. . . . Further, this Board has often held that it is the function of Management to determine the manner and place where the work shall be done as well as the number of employes needed to perform the work. The exception being when said managerial prerogative is limited or relinquished by agreement with the Organization." Award No. 16458 (Mesigh)

It is well established that this Board has no authority to expand or enlarge the terms of the controlling agreement. To sustain this claim would require us to do so.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1969.