Award No. 17950
Docket No. SG-18184

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CLINCHFIELD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Brotherhood of Railroad Signalmen on the Clinchfield Railroad that:

(a) Carrier has completely ignored the current Signalmen's Agreement particularly Rules 1, 3, 23, and 39 (c), when paying Messrs. Raymond Wilson, Harry B. Sykes, J. E. Richards, and/or P. E. Booher, Jr., for their services on certain designated days in the pay periods between October 16 and December 15, 1967, inclusive.

(b) Carrier be required now to pay Mr. Raymond Wilson the Foreman rate of pay for October 16, 17, 24, and 25, 1967, in absence of a Foreman; Mr. Harry B. Sykes the Foreman rate of pay for October 23, 1967, in the absence of both Foreman and Lead SC & E Man, and the Lead SC&E Man rate of pay for October 16, 17, 18, 19, 20, 25, 26, 27, and 30, 1967, in the absence of a Lead SC&E Man; and Mr. J. E. Richards the Lead SC&E Man rate of pay for October 23, 24, 25, and 30, 1967.

(c) Carrier be required now to pay Mr. Harry B. Sykes, SC&E Man in Gang #10, Leading SC&E Man rate of pay for November 1, 2, 6, 7, 8, 9, 10, 13, 14, and 15, 1967; it also be required to pay Mr. J. E. Richards, SC&E Man Gang #10, Leading SC&E Man rate of pay for November 1, 2, and 3, 1967, because these men were filling temporary vacancies.

(d) Carrier be required now to pay Leading SC&E Man P. E. Booher, Jr., the Foreman rate of pay for December 1, 1967, in the absence of Foreman Wilson; it be required also to pay SC&E Man Harry B. Sykes the Leading SC&E Man rate of pay for December 11, 12, 13, 14, and 15, 1967, in the absence of Leading SC&E Man P. E. Booher. (Carrier's File: Signalmen)

EMPLOYES' STATEMENT OF FACTS: This dispute arose because the Carrier refused to fill the position of Foreman on SC&E Gang No. 10, with the senior available Lead SC&E Man, when the Foreman was absent from the Gang, and further refused to advance the senior available SC&E Man to the position of Lead SC&E man on the dates the Foreman and/or Lead SC&E man was absent from the Gang.

During the handling of the dispute on the property the following Rules from the current Agreement were cited in support of the Brotherhood's position.

"RATES OF PAY

Rule 49. The following minimum rates of pay are hereby incorporated in and made a part of this agreement and they shall remain in effect until and unless changed in the manner provided by the Railway Labor Act, as amended.

Foreman	$1.96 per hour
Assistant Foreman	1.86 per hour
Leading SC&E Man—Leading SC&E Maintainer	1.81 per hour
SC&E Man—SC&E Maintainer	1.75 per hour
Assistants:	
1st year—	
1st six months	1.45 per hour
2nd six months	1.47 per hour
2nd year—	
1st six months	1.50 per hour
2nd six months	1.52 per hour
3rd year—	
1st six months	1.55 per hour
2nd six months	1.57 per hour
4th year—	
1st six months	1.59 per hour
2nd six months	1.62 per hour
Helpers	1.43 per hour"

SC&E Gang 10 is composed of varying numbers of men, depending on the requirements of the service.

On the dates for which this claim was made the Foreman was temporarily absent from service. This is not an unusual situation and is brought about by Carrier's desire to cooperate with its employes who may be absent due to illness, either of themselves or their families, exigencies in their home, the need to take care of personal business, or for many other reasons.

On the dates involved in this dispute the Gang, unilaterally, without the Carrier's knowledge or permission and without regard to the needs of the service, stepped members of the gang up in their rates of pay. Naturally, payment on such basis was declined and this claim grows out of Carrier's refusal to allow men to fix their own assignments.

(Exhibits Not Reproduced)

OPINION OF BOARD: On the dates in the claim, the gang Foreman was absent from his job for periods varying from a few hours each day to two days. There were four men in the gang under his supervision, including the Leadman. The issue is whether the Carrier was obliged to fill the Foreman position on those dates from the members in the gang and to upgrade another employe to the position of Leadman.

Employes contend that the Foreman's absence created a temporary vacancy which the Carrier was obliged to fill under Rule 39 (c). That rule reads:

"(c) Temporary positions or vacancies of five days or less will be filled by the senior available employe but when it is known they will be of more than five days duration, the senior employe entitled thereto will be given opportunity to fill the position or vacancy."

Rule 39 (c) does not say that the absence of an employe in the gang constitutes a vacancy. Gangs vary in size and composition. There may be two or three men in a gang and there may be ten or more men. No rule in the schedule agreement obligates the Carrier to assign a Foreman and a Leadman to every gang. Rule 39 (c) merely provides **how** temporary vacancies are filled **if and when** one exists.

Rules 1 to 8 inclusive define, in a general way, the duties of the eight job classifications. They do not prescribe that at least one employe in each job classification must be assigned to each gang. Neither do they provide that a Foreman, or an Assistant Foreman and/or a Leadman must be assigned to each gang. In the absence of such an express direction, Carrier may operate a gang without an employe in any or all of the three named classifications. As a practical matter, however, an employe in at least one of such classifications is assigned. Which one is a prerogative of management just as it is also management's right to decide the size of each gang.

None of the rules cited by the Employes impose an obligation on the Carrier to fill every temporary vacancy. If the parties intended that the Carrier be so obligated they would have so provided. It is not within the power of this Board to write a rule for the parties.

Under the circumstances in this case, and in the absence of a specific prohibition in the schedule agreement, the Carrier had the right to blank the Foreman position on the dates in the claim.

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 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 Carrier did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1970.