

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

**RAILWAY EMPLOYES' DEPARTMENT A.F.L. - C.I.O. —
ELECTRICAL WORKERS**

CHICAGO, SOUTH SHORE AND SOUTH BEND RAILROAD

STATEMENT OF CLAIM: 1. That the Chicago, South Shore and South Bend Railroad violated the current agreement when they used a Foreman to perform Signalmen's work on June 9 and June 13, 1968.

2. That the Chicago, South Shore and South Bend Railroad be ordered to pay Signalman Raymond Kaiser an additional four (4) hours' pay at the straight-time rate of pay for each of the following dates: June 9 and June 13, 1968.

EMPLOYES' STATEMENT OF FACTS: The Chicago, South Shore and South Bend Railroad, hereinafter referred to as the Carrier employs a group of Electrical Workers classed as Signalmen, who are assigned to perform all work on signal equipment on the Carrier's property. In this group is Signalman Raymond Kaiser, hereinafter referred to as the Claimant.

On June 9, 1968, about 1:00 A.M., a flashing light signal at School Street, Michigan City, Indiana was damaged as the result of an accident with an automobile and Train No. 239. On June 13, 1968, during the early evening rush hour, all trains were stopped due to a malfunction of signals between Tamarek and Sheridan, Indiana.

On both June 9 and June 13, 1968, Foreman Charles Wiseman was used to make repairs to the signal equipment.

The Carrier has the signal maintenance divided into four (4) territories. The Claimant is regularly assigned to territory #1, Signalman Smith is regularly assigned to territory #2, and Signalman Morris is assigned to territory #3.

Signalman Smith, territory #2, was on vacation June 9 and June 13, 1968. The Claimant, territory #1, and Signalman Morris, territory #3, were assigned to handle the work on territory #2 while Signalman Smith was on vacation.

The distance from the home of the Foreman to No. 1 Point is 1.3 miles, to No. 2 Point it is 4.0 miles.

(Exhibits not reproduced.)

OPINION OF BOARD: The basic facts are not in dispute. About 1:00 A. M. on Sunday, June 9, 1968 the flashing light signal at School Street, Michigan City, Indiana was damaged as a result of an accident with an automobile and Train No. 239. In the early evening rush hours of June 13, 1968, all trains were stopped by red signals due to a malfunction of signals between Tamarek and Sheridan, Indiana. On both dates Carrier used Foreman, Charles Wiseman, to repair the signal equipment.

Employees contend that Rule 24 prohibits a foreman from performing work on signal equipment when he is not supervising signalmen. Since Mr. Wiseman was supervising no one when he made the repairs at the time of the two incidents, the Carrier violated said Rule 24 which reads as follows:

"None but mechanics or apprentices, regularly employed as such, shall do mechanic's work as per special rules of each craft.

"This does not prohibit foremen in exercise of their supervisory duties to perform work."

Carrier argues that these were emergency situations and that emergency "work is performed by the first available man qualified in the electrical craft."

Assuming that these were emergency situations, did the Carrier have the right to assign the Foreman without regard to Rule 24? In view of that rule, did the Carrier exercise good judgment in assigning the Foreman to perform the work and did it act in a prudent and in a good faith manner? Upon all of the evidence in the record, we believe that the Carrier did not exercise good judgment when it called upon the Foreman to do the work, nor was the assignment made in a prudent and in a good faith manner.

Rule 24 is clear and meaningful. It is not ambiguous. Its purpose is to preserve mechanical signal work to mechanics and apprentices to the exclusion of foremen, except as the latter may perform some mechanical work when they are "supervising the work of three (3) or less men." (Letter of Agreement dated October 2, 1962). While an employer is given greater latitude of judgment in emergency situations, he cannot completely disregard specific contract rules. Certainly, the Carrier must have called Mr. Wiseman on each of the dates. There is no showing in the record that the Carrier attempted to call any of the mechanical employees, and consequently there is no evidence that none were available. There is also no showing that the Foreman lived closer to the scene of each incident, or that he alone could possibly respond more quickly to a call, or that the work could not have been performed by a signalman without the supervision of a foreman. These criteria, ignored by the Carrier, are proper and essential to the effective application of Rule 24. Lacking a showing of prudence and good faith, the assignment of the Foreman was in violation of the Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds: