

Award No. 18655
Docket No. SG-19002

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

UNION RAILROAD COMPANY

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

Mr. H. C. Potts be paid for eight hours at the rate of the difference between his *pro rata* rate of pay and that of Leading Signalman account his filling the vacancy of such higher position for one day during the week of April 14, 1969.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties to this dispute bearing an effective date of October 1, 1950 (Reprinted December 1, 1965), as amended, which is by reference made a part of the record herein. Pertinent to this dispute is Rule 14, which reads:

"Filling Temporary Vacancies

When an employe works four (4) hours or more on a position which pays a higher rate, he shall receive the higher rate for the entire day. If he works less than four (4) hours, he shall be paid the higher rate for the time actually worked on the higher rated position, with a minimum allowance of one (1) hour. If an employe is required to fill temporarily, the place of another employe receiving a lower rate, his rate will not be changed."

During the week of April 14 to April 18, 1969, inclusive, the position of Foreman in the Signal Department was vacated as a result of the vacation of the regularly assigned Foreman. The Carrier filled this vacancy by arbitrarily assigning Mr. R. J. Hays, Leading Signalman on the North Division, as Assistant Foreman to fill the temporary position of Foreman. This resulted in Mr. Hays' regular assignment as Leading Signalman being vacated.

While Mr. Hays was relieving the vacationing Foreman, Mr. H. C. Potts, a regular assigned Signalman was arbitrarily assigned for one day to perform maintenance duties on the vacant Leading Signalman's position. For that day, Mr. Potts, was paid only his regular Signalman's rate of pay. On May 26, 1969, claim was filed on behalf of Claimant for difference between his *pro rata* rate of pay and that of Leading Signalman.

This claim has been handled in the usual and proper manner, up to and including the highest officer of the Carrier designated to handle such disputes,

foot on the front rod, bonding four joints by drilling eight holes and placing bond wires, and adjusting operating rod and replacing lock bars on switch No. 111. The physical replacing of the stock rail and of the switch point was performed by the Carrier's Maintenance of Way Department. In general, Mr. Potts performed work on switch No. 111 which dealt with the precise automatic movement of the switch as controlled by the Carrier's full automatic consolidated remote controlled interlocking equipment located in Duquesne, Pennsylvania.

Leading Signalmen and Signalmen are all employees covered by the agreement between the Union Railroad Company and the Brotherhood of Railroad Signalmen. Both classifications are covered by Rule 10 (Classifications) quoted above.

In the employees paragraphs No. 2 and No. 3 of their grievance, they make reference to work performed by Mr. R. J. Hays during the week of April 14 thru 18, 1969 when he allegedly filled a foreman's vacation vacancy. The work performed by Mr. Hays is a dispute that has been docketed as a companion case before the Third Division as Docket N.R.A.B. No. 2255. Therefore, the facts and arguments involving this issue are set forth in Docketed Case No. 2255 and that incident must stand on its own merits along with the facts as they are presented in the Carrier's submission involving this case. Because Signalman Potts performed the work on switch No. 111 on April 10, 1969, the grievance heretofore quoted was filed.

The grievance was progressed under the existing grievance procedure between the Carrier and Organization. On July 9, 1969, this grievance was declined by Mr. W. H. Martin, Superintendent of the Signal and Telephone Department. The letter of declination is submitted as Carrier's Exhibit "A."

On August 26, 1969, this grievance was appealed to the office of Director Labor Relations. This letter is attached hereto as Carrier's Exhibit "B."

In a letter dated October 23, 1969, the above grievance was declined by the office of the Director Labor Relations. This letter is submitted as Carrier's Exhibit "C."

The office of the Director Labor Relations is the highest office on this property designated to handle labor matters.

As the Carrier understands the employees' grievance, they are contending that the agreement was violated when Signalman Potts performed work on switch No. 111 that allegedly belongs to Leading Signalmen to the exclusion of all others.

(Exhibits not reproduced.)

OPINION OF BOARD: In connection with the vacation absence of a Signal Foreman, Leading Signalman Hays was used off his regular assignment. Claimant H. C. Potts, Signalman, contends that he filled the Leading Signalman position for one day during the week of April 14, 1969, and is thus entitled to the higher rate of pay for that day.

The Carrier contends that Claimant Potts did not fill the Leading Signalman's position on the day involved, and that he did not perform work belonging exclusively to the Leading Signalman.

The record contains no probative evidence by the Petitioner that Claimant Potts actually filled the position of Leading Signalman for one day during the week of April 14, 1969, or that he assumed the responsibility of or performed work belonging exclusively to the Leading Signalman. In Award 17488, involving the same parties, the Board held:

"Claimant, a Signalman, was on March 23 and 24, 1965 assigned to make adjustments to car retarders in Carrier's classification yard. Employees urge that this is work belonging to the Leading Signalman classification and cite certain rules of the Agreement as well as past practice in support of their claim that Claimant should be paid at the higher Leading Signalman's rate for those hours so employed.

Carrier responds that Rule No. 1, only recognizes that such work is Signal Department work and does not limit or reserve any particular work to any classification; further, that Rule No. 10, Classification, does not provide exclusive grants of work to each classification. This Board is in agreement.

Thus, to show that Rule 13, Advertising Positions, has been broken and the Agreement violated it becomes the burden of the Organization to show by past practice that the work of adjusting car retarders has been exclusive to Leading Signalmen. This has not been done."

The record warrants a similar holding herein. The claim will be denied.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois this 23rd day of July 1971.

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