NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19919
THIRD DIVISION Docket Number TD-20131

Burl E. Hays, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Georgia Railroad

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Georgia Railroad (hereinafter referred to as "the Carrier") violated the currently effective Schedule Agreement between the parties, Article 8 thereof in particular, by its action in imposing discipline upon Train Dispatcher A. L. Hall, Sr., based upon charges made against him on August 16, 1972, and hearing held pursuant thereto.

(b) The Carrier shall now rescind the disciplinary action taken and clear the record of Claimant A. L. Hall, Sr.

OPINION OF BOARD: Train Dispatcher A. L. Hall, Sr., following an investigation, was assessed thirty demerits by Carrier for alleged failure to comply with Operating Rules F and 751 which resulted in delay to Work Extra 1025 at Greensboro, Georgia, on August 11, 1973.

The American Train Dispatchers Association, on behalf of Claimant Hall, asks that Carrier rescind the disciplinary action and clear Hall's record on the following grounds:

1. The evidence fails to prove that Claimant Hall was in violation of Rules F and 751 of the Operating Rules.

2. Extenuating circumstances existed, in that Claimant was not informed of work to be performed by Work Extra 1025, as he should have been.

3. Claimant was not accorded a fair and impartial hearing because the conducting officer of the hearing "coached" a Carrier witness.

After careful reading of Statements of the Organization and Carrier, and especially the evidence taken at the hearing, the Board is of the opinion that the evidence adduced at the hearing substantiated the charge against Claimant, thereby warranting discipline.

As to the alleged "extenuating circumstances" referred to by the Organization, we feel that it was Claimant's responsibility to properly supervise the movement of the Work Extra, and if he had done so, he would have been informed "of work to be performed by Work Extra 1025, as he should have been."

Finally, as to the Organization's position that claimant was not accorded a fair and impartial hearing, although the officer conducting the investigation was quite persistent, we do not believe this constituted prejudice, and we do not think Claimant was deprived of due process of Law in any way.

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 Enployes 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: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

LABOR MEMBER'S DISSENT TO AWARD NO. 19919, DOCKET TD-20131
REFEREE HAYS

Award No. 19919 correctly states the discipline resulted from a delay to Work Extra 1025 and correctly states the Organization's three grounds for requesting rescinding of the discipline assessed. Thereafter, the Award is not correct.

The Award states:

> " . . . After careful reading of Statements of the Organization end Carrier, and especially the evidence taken at the hearing, the Board is of the opinion that the evidence adduced at the hearing substantiated ths charge against Claimant, theroby warranting discipline."

Taken alone, such a statement might have weight and/or merit, but following this statement, the Award reeds:

> "As to the alleged 'extenuating circumstances' referred to by the Organization, we feel that it was Claimant's responsibility to properly supervise the movement of the Work Extra, and if he had done so, he would have been informed 'of work to be performed by Work Extra 1025, as he should have been.'"

Finding it was "Claimant's responsibility to properly supervise the movement of the Work Extra" and if he had done so, he would have been informed "of work to be performed by Work Extra 1025, es he should have been" imputes a need for clairvoyance in this case. The Road Foreman of Engines, the man in charge at the derailment on Work Extra 1025, when asked:

> "Do you know whether or not anyone informed the train dispatcher thet the Work Extra would have to go to Greensboro with this car?",

replied:

> "No, I don't know if anyone told the dispatcher that I was going to leave there at this time to come to Greensboro . . . ".

This followed the Road Foreman's statement that:

> "I knew when we got things together, I don't know whether it was 5:09 or not, that we'd hove to come to Greensboro and sot off a bad order car, and go back with the wrecker."

Tho hearing transcript plainly shows wither tho Claimant nor the Assistant Chief Dispatcher (Claimant's immediate superior) was informed by tho Road Foreman of Enginos (the man in charge cf tha wrecker) nor tho Superintendent of Transportation (who conducted the investigation) tho wrecker train would have to leave the derailment, haul a bad order car to Greensboro, and return to the derailment.

Earlier in the Award it was recognized the Employes' objection was to the conducting officer of the hearing coaching a Carrier witness. But Award No. 19919, in closing, states:

> "Finally, as to the Organization's position that claimant was not accorded a fnir and impartial hearing, although the officer conducting the investigation was quite persistent, we do not believe this constituted prejudice, and we do not think Claimant was deprived of due process of law in any way."

The issue of being denied a fair and impartial hearing because of the coaching of Carrier's witness by the conducting officer was not met.

I must dissent.

J. P. Erickson
Labor Member

Dissent to Award 19920, Docket SG-19644

The Majority's Opinion in Award 19920, insofar as it sustains the position of the Petitioner, is correct; however, the balance of the reasoning in the Award is in error.

The Majority states that a careful study of the Agreement as a whole (with particular reference to Rules 51, 52 and the July 28, 1950 Memorandum of Agreement) leads them to conclude that the word "gang" has been used carefully and restrictively in the Agreement. The Majority's conclusion is quite interesting because when one reads Agreement Rule 51 it will be noted that the only reference made to a signal gang is the requirement that job bulletins be posted on bulletin boards of the gangs. Rule 52 makes no reference to gangs whatsoever. The Memorandum of Agreement dated July 28, 1950 unquestionably concerns gangs; however, there is no effort made in that Memorandum to define the gang. It concerns only the temporary transfer of signal and repair gangs (assigned to outfit cars) to divisions other then the division on which the members thereof hold seniority.

The Majority next cites and quotes briefly from Award 18367. The Majority should have reviewed the facts behind Award 18367. If it had done so, it would have found that the work there in dispute was performed by the members of a gang and that the gang had been assisted by certain other employes assigned by bulletin elsewhere. It was the contention that these other employes were also members of the gang in the circumstances there prevailing that the Referee in Award 18367 found to be without merit. Such was not the case in the present dispute as all the employes involved were regularly assigned by bulletin to the Signal Shop in question.

The Majority next cites Awards 14861 and 18873, both involving Carriers other than the present Respondent. It is asserted that in interpreting the same language (Rule 13) in other Agreements in the past, we concluded quite properly that the shop force is not a gang within the intent of the parties drafting the Agreement. In both of the cases cited the Board had before it and gave consideration to Agreement language other than that similar to the present Rule 13. As a matter of fact, it is only in Award 14861 that language even slightly similar to that in Agreement Rule 13 is cited and Award 18873 was sustained based upon rules not even vaguely similar to the present Rule 13.

Dissent to Award 19920, Docket SG-19644 (Continued)

Hence, the Majority has denied the Petitioner's claim in this dispute citing Agreement provisions which do not relate to the present subject matter and relying upon Awards from other properties which were based in whole or in part upon Agreement provisions applicable only on those properties and not controlling here.

Award 19920 is in error and I dissent.

W. W. Altus, Jr.
Labor Member

The classification "Bus Driver" appears in the Agreement only on the Rate Sheet - following Class C Machine Operators. There is no such classification in the B & B subdepartment. The Scope Rule in this Agreement is conceded to be general in nature.

The primary argument advanced by Petitioner is that the assignment of a B & B Subdepartment employee to perform work of a character accruing to Track Subdepartment employees was in violation of the Agreement. Carrier argues that there was no rule violation since it had conformed to the Composite Service Rule (Rule 24); that the incumbent assigned to a position does not have the exclusive right to the work of such position; and that the Carrier over the years has used mechanics and others to drive trucks, buses and other vehicles.

We do not agree with the argument raised by Carrier with respect to the Composite Service Rule. That Rule relates to pay and may not properly be construed so as to confer rights to work to higher classified employees. It should not have been used to justify the assignment of work in this case, although appropriate in terms of the pay to the employee used to drive the bus. We have held consistently in many Awards that this rule is concerned primarily with pay for work performed (See Awards 19816, 12135, 12688 and others).

We have searched in vain for a Rule which reserves the work of driving buses exclusively to employees classified as bus drivers in the wage schedule referred to above. Rule 2 and the Supplement were for the purposes of classification and pay, not for the reservation of work. In Award 18876 and a host of other awards we have held repeatedly that:"... classifications of work are not exclusive grants of work to that classification."

Given the general Scope Rule of this Agreement, it would have been necessary for Petitioner to establish a system-wide exclusive past practice, to support its contention that the work in question was reserved to the particular classification. The record is devoid of such evidence and further there was no denial by the Organization of the Carrier's assertion that a contrary practice was prevalent.

For the reasons indicated above the Claim must be denied.

FINDINGS: The Third Divisionof 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 claim be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Panke
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19920
THIRD DIVISION Docket Number SG-19644

Irwin M. Lieberman, Referee

PARTIES TO OISP'JTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (Pacific Lines):

On behalf of the following employes of the Sacramento Signal Shop: Mr. W. T. Gangler, W. H. Reisinger, E. J. Henning, W. E. Troyer, M. 0. Waits, H. N. Huffstetler, G. M. Gunter, W. R. Davis, R. Kaus, 0. L. Bohling, G. W. Smith, A. L. Boyd, K. E. Moore and L. J. Carey.

(a) That the Southern Pacific Transportation Company (Pacific Lines) violated the Agreement between the Company and the Employes of the Signal Department represented by the Brotherhood of Railroad Signalmen, Effective April 1, 1947 (Reprinted April 1, 1958 including revisions) and particularly Rule 13, last paragraph which provides, "Where gang men are required to work overtime, the senior man in a class in the gang shall be given preference to such overtime work." This violation of Rule 13 resulted in violation of Rule 70, which provides: Rule 70. LOSS OF EARNINGS: "An employe covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement shall be reimbursed for such loss."

(b) That the employes named as claimants be reimbursed for loss suffered when junior men were called to perform overtime work with no preference given to claimants who were senior employes.

/Carrier's File: SIG 148-1827

OPINION OF BOARD: In 1961 Carrier established a System Signal Shop at Sacramento, at the same time closing division signal shops at West Oakland and San Jose. With respect to this shop, a special memorandum of understanding was executed by Carrier and, Organization. There are four different major activities at the Sacramento Shop: the machine shop, relay shop, wiring shop and blacksmith shop. 0" June 15, 16, 20, 23 and 24, 1970 overtime work was required in the wiring shop and certain employees were called on each day and assigned this overtime.

The Organization contends that these employees were assigned the overtime work without giving other more senior employees assigned to the Signal Shop at Sacramento an opportunity to perform the overtime work. The final paragraph of Rule 13 of the Agreement is cited:

> "Where gang men are required to work overtime, the senior man in a class in the gang shall be given preference to

"such overtime work".

The Memorandum of Agreement relating to the establishment of the Sacramento System Signal Shop is silent on the manner in which overtime is to be apportioned. The Carrier contended that first an oral agreement had been reached with the General Chairman of the Organization and second that this agreement had been implemented without challenge over a ten year period; both of the preceding provided that overtime would be apportioned among the employees of that shop in which the work involved would be performed during the normal working hours. Carrier claims that, in accordance with that practice, signal employees working in the Wiring Shop were called, in order of seniority preference, to perform the overtime required. Petitioner responded that the oral agreement was unknown to it, and that the clear language of the Agreement should apply, in spite of the forty one incidents cited by Carrier in support of its accepted past practice position. Petitioner argues that the issue in this case is whether or not the Carrier has one or four signal shops at Sacramento and contends that the evidence points to there being only one shop. From this conclusion, Petitioner asserts that the single shop constitutes a "gang' within the intent and meaning of Rule 13.

We agree with the Organization that the Sacramento operation is on shop - not four. However, a careful study of the Agreement as a "hole (with particular reference to Rules 51, 52 and the July 28, 1950 Memorandum of Agree ment) leads us to conclude that the word "gang" has been used carefully and restrictively in the Agreement. In dealing with a closely related issue and the same parties we said in Award 18367:

> "The Board finds that only those assigned by bulletin are members of a 'gang'. The word 'gang' in this Agreement applies only to those regularly assigned and identified. These Claimants were not regularly assigned and identified as members of the 'gang' that performed this work, and, therefore, had not preference."

In interpreting the same language (Rule 13) in other agreements in the past we concluded quite properly that the shop force is not a "gang" within the intent of the parties drafting the Agreement. (See Awards 18873 and 14861). Since our function is to interpret not "rite rules it would seem appropriate for the party wishing to change the meaning and coverage of Rule 13 that this be done at the bargaining table.

In discussing the practice in its submission Carrier said: "That is precisely what occurred in this instance, "hen signal employees regularly assigned to work in the Wiring Shop were called in order of seniority preference within that

shop to perform the overtime work here involved." The Organization is certainly entitled to consistency in the implementation of a practice Just as it would be for any written Rule. The record herein indicates that one Claimant - L. J. Carey - was not accorded consistency in the overtime assignment involved in this matter. On June 15, 16, and June 20 employees with less seniority in the Wiring Shop were given the opportunity to work overtime and Carey was not. He should be compensated for the fifteen hours of work he was deprived of. The remainder of 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 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 violated.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

Dissent to Award 19920, Docket SG-19644

The Majority's Opinion in Award 19920, insofar as it sustains the position of the Petitioner, is correct; however, the balance of the reasoning in the Award is in error.

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The Majority next cites Awards 14861 and 18873, both involving Carriers other than the present Respondent. It is asserted that in interpreting the same language (Rule 13) in other Agreements in the past, we concluded quite properly that the shop force is not a gang within the intent of the parties drafting the Agreement. In both of the cases cited the Board had before it and gave consideration to Agreement language other than that similar to the present Rule 13. As a matter of fact, it is only in Award 14861 that language even slightly similar to that in Agreement Rule I.3 is cited and Award 18873 was sustained based upon rules not even vaguely similar to the present Rule 13.

Hence, the Majority has denied the Petitioner's claim in this dispute citing Agreement provisions which do not relate to the present subject matter end relying upon Awards from other properties which were based in whole or in part upon Agreement provisions applicable only on those properties and not controlling hare.

Award 19920 is in error and I dissent.

W. W. Altus, Jr.
Labor Member

The classification "Bus Driver" appears in the Agreement only on the Rate Sheet - following Class C Machine Operators. There is no such classification in the B & B subdepartment. The Scope Rule in this Agreement is conceded to be general in nature.

The primary argument advanced by Petitioner is that the assignment of a B & B Subdepartment employee to perform work of a character accruing to Track Subdepartment employees was in violation of the Agreement. Carrier argues that there was no rule violation since it had conformed to the Composite Service Rule (Rule 24); that the incumbent assigned to a position does not have the exclusive right to the work of such position; end that the Carrier over the years has used mechanics and others to drive trucks, buses and other vehicles.

We do not agree with the argument raised by Carrier with respect to the Composite Service Rule. That Rule relates to pay and may not properly be construed so as to confer rights to work to higher classified employees. It should not have been used to Justify the assignment of work in this case, although appropriate in terms of the pay to the employee used to drive the bus. We have held consistently in many Awards that this rule is concerned primarily with pay for work performed (See Awards 19816, 12135, 12688 and others).

We have searched in vain for a Rule which reserves the work of driving buses exclusively to employees classified as bus drivers in the wage schedule referred to above. Rule 2 and the Supplement were for the purposes of classification end pay, not for the reservation of work. In Award 18876 and a host of other awards we have held repeatedly that:"... classifications of work are not exclusive grants of work to that classification."

Given the general Scope Rule of this Agreement, it would have been necessary for Petitioner to establish a system-wide exclusive past practice, to support its contention that the work in question was reserved to the particular classification. The record is devoid of such evidence and further there was no denial by the Organization of the Carrier's assertion that a contrary practice was prevalent.

For the reasons indicated above the Claim must be denied.

FINDINGS: The Third Divisionof 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 claim be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Parker
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.