NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20332
Docket Number SG-19913

Joseph Lazar, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Erie Lackawanna Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie Lackawanna Railway Company that:

(a) Carries violated Rule No. 27 of the Signalmen's Agreement dated March 1, 1953, when it reduced Assistant Signalman M. L. Wilson to rank of Signal Helper.

(b) Carrier should compensate Mr. M. L. Wilson for the difference between the rates of pay for Signal Helper and Assistant Signalman, for the period from March 8, 1971, through May 10, 1971.

/Carrier's File: 196-Sig./

OPINION OF BOARD: Bulletin No. 2, dated February 19, 1971, abolished the positions of two assistant signalmen, including that of Grievant, in Gang No. 51. Gang No. 51 prior thereto had five signalmen. Grievant thereupon displaced to the position of helper on Gang No. 51. Claim is for the difference between the rates of pay for Signal Helper and Assistant Signalman, for' the period from March 8, 1971, through May 10, 1971. Claim is that Carrier violated Rule No. 27, reading:

> "Rule 27. The number of assistant signalmen and assistant signal maintainers on a seniority district shall be consistent with the requirements of the service and the signal apparatus to be installed and maintained. It will be the policy of the management to maintain as near as practicable the ratio of one assistant signalman or assistant signal maintainer to each three (3) signalmen or signal maintainers."

The Organization states that Claimant performed the same type of work as a helper that he performed as an assistant, but since the Carrier points out that this statement was never presented on the property in the handling of the case, we cannot regard it as a proper inclusion in the record of this case. The Carrier, on the other hand, states there was a total of 15 Signal Maintainers and Signalmen and 4 Assistants on the seniority district, but the Organization points out that this statement was never presented on the property in the handling of the case, and we c-t

regard it as a proper inclusion in the record of this case. For the purposes of the proper record, we find that the seniority district had about 21 Signalmen and 4 Assistants as stated by the General Chairman's letter of June 7, 1971, Brotherhood's Exhibit No. 7, which statement was not denied on the property.

The Carrier construes Rule 27 to mean "assistant signalmen or assistant signal maintainers on a seniority district not any specific gang". We note that the first sentence of Rule 27 speaks of "seniority district", while the ratio provision in the second sentence of Rule 27 is silent in reference to either gang or seniority district. If we view the ratio provision as having, in some degree, some function pertaining to the training of the assistants who are defined in the Agreement as apprentices in training for the "journeyman" or Signalman or Signal Maintainer level, we would be inclined to favor an interpretation of "gang" over that of "seniority district." We do not, however, have before us in the record the negotiation history or past practice to help clarify this question. On the present record, however, insofar as the parties here involved are concerned, we find it significant that the General Chairman, in letter of May 30, 1971, to the Chief Engineer, stated:

> "Mr. Bush if Mt. Bell will not go along with Rule #27 in the Gang #51, I will go along with his advice on the Seniority District, we have about 21 Signalmen and 4 Assistants between Hornell, N.Y. and Meadville, Penna. this means we should have three more assistants, on Mahoning Division, if this is his interpretation of Rule #27." (sic)

We find, accordingly, that the second sentence of Rule #27, the ratio provision, on this property, is applicable to "seniority district" and not to gang.

It is evident, however, that about 21 Signalmen and 4 Assistants on the seniority district is not "the ratio of one assistant signalman or assistant signal maintainer to each three (3) signalmen or signal maintainers." It is not appropriate, however, to focus on the quoted terms without giving consideration to the language of the entire rule. Well settled rules of construction of contracts require that each provision is to be given effect, and that as to an ambiguous or doubtful provision a construction must if possible be adopted which is consistent with the rest of the agreement.

We must, accordingly, give regard to other provisions and language in Rule #27. The first sentence of the rule states: "The number of assistant signalmen and assistant signal maintainers on a seniority district shall be consistent with the requirements of the service and the signal apparatus to be installed and maintained." It is clear that if requirements of the service and the signal apparatus to be installed and maintained are regarded as appropriately affecting the umber of assistant signalmen and assistant signal maintainers on a seniority district, the parties did not contemplate an absolute l-3 ratio; and it is clear that practical effect must be given to the terms "as near as practicable." This Board, in construing the terms, "so far as practicable", stated, "The words, 'So far as practicable' leave some degree of discretion within the Carries." (Award No. 13246, (Hamilton). The terms, "as near as practicable" are construed by us also as resting some degree of discretion within the Carrier.

We construe Rule 827, read as a whole, as contemplating a discretionary management prerogative to provide a l-3 ratio, as near as practicable, consistent with the requirements of the service and the signal apparatus to be installed and maintained.

As stated in Award No. 18379 (O'Brien):

> "Thus, the intent of the parties that Carrier be allowed discretion in the matter of jurisdiction is obvious. To hold otherwise, would constitute a revision of the agreement by interpretation. That is beyond the jurisdiction of this Board. See Award 15380 (Ives)."

We reach the question, accordingly, whether the discretionary management prerogative was properly exercised. The record, however, provides us with little more than assertion and allegation and contention concerning the requirements of the service on the basis of which Bulletin No. 2 of February 19, 1971 was issued. The record on this question is barren of fact.

Therefore, based on the record before us, in this particular case, and without establishing a precedent, we cannot find that petitioner has supplied the factual evidence necessary to establish the alleged violation. Accordingly, we shall dismiss the claim for lack of proof.

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 Claim be dismissed for lack of proof.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1974.

Dissent to Award 20332, Docket SC-19913

We hold the Majority to be in error in Award 20332.

The Majority has placed the whole burden of proof upon the Petitioner while the record of handling on the property indicates to us that it was the Carrier which relied on the Agreement rule language concerning practicality. It is our position that the Carrier having relied on that issue should have been held responsible for its proof.

W. W. Altus, Jr.
Labor Member