

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20604
Docket Number **SG-20450**

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Chesapeake and Ohio Railway Company
(Chesapeake District)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood of Railroad Signalmen **on the** Chesapeake and Ohio Railway company (Chesapeake **District**) **that:**

(a) Carrier violated and continues to violate the current **Signalmen's Agreement**, particularly Rules 4 and 28, when on or about April 3, 1972 Lyle C. Clark, a qualified **Signalman**, was assigned Signalman's work at Assistant Signalman's rate of pay.

(b) Carrier now pay Claimant Lyle C. **Clark**, C&O ID 82613340, the difference in rate of pay received and the **Signalman's** rate of pay, for all work assigned in violation of the Signalman's Agreement as cited in part (a) of this claim.

(c) Inasmuch as this is a continuing violation, said claim to be retroactive sixty (60) days from date of filing (June 6, 1972) and to **continue** until such time as Carrier takes necessary corrective action to **comply** with violation as cited in part (a). (Carrier's File: **1-SG-306**; General Chairman's File: 720606-128)

OPINION OF BOARD: **Claimant** was assigned as an Assistant **Signalman** on August 3, 1970. On **January** 15, 1971, he was assigned as a Signalman, and continued in that position until October 14, 1971 when he was **furloughed**.

On April 3, 1972, Claimant was recalled as an Assistant **Signalman**.

The Organization asserts that Claimant should have been paid as a Signalman from June 6, 1972 (date of claim) until July 14, 1972 (date Claimant was "promoted" to Signalman position).

The Board feels that Claimant's work direction, under **Rule** 5(a) controls this dispute:

"(a) Assistant Signalmen, Assistant Signal Maintainers: An employee in training **for** a position of signalman or signal maintainer, working with and under the direction of a signalman or signal **maintainer**, shall be classified as **an assistant signalman or** assistant signal maintainer.

Note. - Insertion of the **word** 'with' in this paragraph is not intended to restrict assistants from performing work, under the direction of a signalman **or** signal maintainer. It is not intended that the word 'with' means that assistants **must** work within any **specified zone** or distance in performing the **work** under the direction of a mechanic. Likewise, it is not intended that assistants be sent 'out alone and on their own responsibility to perform bona fide mechanics work.'"

We note a factual dispute, in this regard, between the parties, But, in October, 1972, Claimant executed an affidavit stating that when **recalled** on April 3, 1972, he was assigned to the **same work** and **same** duties he had previously performed as a Signalman, and that he worked under the **same supervision** of the Lead Signalman as he did prior to his furlough. Carrier's denials of Organization's position **were** generalized in nature and did not present direct evidence to contradict the above mentioned affidavit.

The Carrier has cited cases dealing with burden of proof. **We** find that Carrier has failed to disturb the Organization's proof in this case, and accordingly, we will sustain the claim from June 6, 1972 until the date Claimant was promoted to Signalman.

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;

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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 stated in the Opinion of the Board.

NATIONAL **RAILROAD ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this **31st** day of January 1975.