NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20802
THIRD DIVISION Docket Number SG-20457

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company that:

(a) On or about February 16, 1972 the Carrier violated the current Signalmen's agreement, particularly Rule 20 (a) and Rule 76, when Signal Maintainer D. F. Marr, headquartered at Gowrie, Iowa, performed signal work at Merrill, Iowa, on territory assigned to the Eagle Grove Signal Maintainer.

(b) The Carrier now be required to compensate him at one-half time rate, per Rule 20 (a), for the above work performed on February 16, 1972. (Carrier's File: 79-3-103)

OPINION OF BOARD: Prior to January, 1972 Carrier had on its Central Division several signal maintenance territories with a maintainer on each at a designated headquarters, to wit: Mason City, Gowrie, Hampton, Eagle Grove and Oskaloosa, Iowa. A signal maintainer was assigned to each of these territories by a "characteristic notice" issued pursuant to Rule 42 (b) of the controlling Agreement. Claimant D. F. Marr was the Signal Maintainer headquartered at Gowrie, Iowa, a position classified as a road assignment and compensated at a monthly rate under Rule 59 (b) of the Agreement.

Effective January 24, 1972 Carrier issued a new Characteristic Notice which consolidated the former separate signal territories into a single 1400 mile territory headquartered at Mason City, Iowa. Under this arrangement the former position at Oskaloosa was abolished; a new position of Lead Signal Maintainer was established at Mason City; signal maintainers were stationed at Gowrie, Hampton, Eagle Grove and Mason City all under a general directive to perform service anywhere in the consolidated territory as directed by the Lead Signal Maintainer.

Claimant D. F. Marr, headquartered at Gowrie, Iowa performed some work at Merrill, Iowa during his regular working hours on February 16, 1972. Merrill, Iowa is a point which, prior to January 24, 1972, was assigned to the signal maintainer headquartered at Eagle Grove. The record indicates that subsequent to the January 24, 1972 Characteristic Notice the Eagle Grove maintainer ordinarily performs any work at Merrill but, on February 16, 1972 said work was performed by Claimant. Claimant was paid at the straight time rate for service performed and, on March 17, 1972, initiated the instant claim for the difference between straight time and time and one-half under Rule 20 (a).

Petitioner, on behalf of Claimant, alleges that Claimant was used outside his assigned territory without proper reimbursement in violation of Rule 20 (a). In addition, Petitioner asserts that the Characterestic Notice issued on January 24, 1972 and its implementation herein are in violation of Rule 76 of the Agreement. We shall treat these allegations infra, but first we are metwith a procedural objection by Petitioner.

The Organization asserts that the claim is payable under the Time Limit on Claims Rule of the 1954 National Agreement, on the grounds that Carrier's denial on the property insufficiently stated the reasons therefor. The record shows that Carrier denied the claim with the statement"There is no basis for claim as I can find no rule to support it." We have reviewed the facts of this matter and the abundance of cited Awards which indicate a wide and disparate range of decisions in cases of this type. On balance, in the circumstances of this case, we do not find such procedural irregularity as to preclude our attention to the merits. In particular, the violation is arguable at best, no showing of prejudice has been made, and the purposes of Section 3, First have not been frustrated thereby.

The Organization cites Rules 20 *(a)* and 76, *which* read as follows:

> "EMERGENCY WORK. 20 (a) An employe assigned to a section, shop, or plant will not be required to perform work outside such section, shop, or plant not covered by his assignment, except in case of emergency when there are no other qualified sig[redacted] available, and when so employed will be allowed additional compensation on basis of one-half regular hourly rate for time worked. Men will not be required to remain away from their section, shop, or plant in excess of three days. This rule does not apply to helpers or assistant signalmen who may be temporarily advanced to fill a temporary vacancy."
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> "ESTABLISHED POSITIONS. 76. Established positions will not be discontinued and new ones created under a different title covering relatively the same class of work, for the purpose of reducing rates of pay or evading application of these rules."

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The major premise of the Organization is that Claimant worked outside his assigned territory on February 16, 1972. But the record shows that the assigned territory of Claimant after the January 24, 1972 was the new unified signal maintenance territory established by the Characteristic

Notice of that date. Accordingly, if the claim for a violation of Rule 20 (a) is to stand, that Characteristic Notice must be found invalid. The Organization urges that such is the case i.e., that the Characteristic Notice issued January 24, 1972 is in and of itself a direct violation of Rule 76. In that connection, the Organization contends that the Carrier initiated the new Characteristic Notice of January 24, 1972 solely to avoid the time and one-half payment effect of Rule 20 (a), thereby circumventing the Agreement.

We have carefully considered all of the evidence and arguments and must conclude that the claim is not sustainable herein. While equity may lend some elasticity to contract interpretation in appropriate cases, if the contract language is clear and express we have no other alternative but to take it as it is written. A reading of Rule 76 indicates that to support a claimed violation two things must be shown by Claimant: 1) The discontinuance of established position and creation of new ones under a different title covering relatively the same class of work and 2) That same was done for the purpose of reducing rates of pay or evading application of Agreement rules. Careful examination of the instant record shows that Claimant was a signal maintainer before January 24, 1972 and after; that his position was not discontinued and recreated under a new title, covering relatively the same class of work; nor was his rate of pay reduced. The record does support a reasonable inference that the purpose of the new Characteristic Notice was to avoid payments under Rule 20 (a). But this bare showing, unaccompanied by the other aforementioned elements of Rule 76, cannot alone support a claim for a violation thereof. In these circumstances, we have no alternative but to find no violation of Rule 76.

We have indicated supra that the claimed violation of Rule 20 (a) must, on this record, depend on a prior showing that Rule 76 was violated by the Characteristic Notice of January 24, 1972. Inasmuch as we can find no violation of Rule 76 herein, then the claimed violation of Rule 20 (a) must likewise fail.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Panka
Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1975.

Dissent to Award 20796, Docket SG-20615
Award 20797, Docket SG-20616
Award 20802, Docket SC-20457
Award 20811, Docket SG-20611

The Majority in Awards 20796, 20797, 20802 and 20811 has erred.

The Parties' Agreement Rule 76 prohibits the execution by the Carrier of certain direct acts for the purpose of evading its rules. We established many years ago that we would not condone a Carrier's acts to accomplish indirectly that which it is prohibited from accomplishing directly. We have also established that, when one knows the inevitable outcome of a contemplated act, he must be considered to have committed the act with that intent or purpose.

The confronting records establish that the Carrier did accomplish indirectly that which is prohibited directly and that the Carrier must have known the inevitable outcome of its act. In fact, we believe the record clearly shows that such was the very reason for the Carrier engaging the "outside consulting firm"; certainly the reverse is not the case.

Awards 20796, 20797, 20802 and 20811 are in error end I dissent.

W. W. Altus, Jr.
Labor Member