NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20811
THIRD DIVISION Docket Number X-20611

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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:

Claim No. 1

(a) On or about October 13, 1972 the carrier violated the current Agreement between the Brotherhood of Railroad Signalmen and the Chicago and North Western Transportation Company, when the Signal Supr. returned the overtime slip of Mr. K. C. Hodge, Ldr. Signal Mtnr. at Lake Bluff, Illinois, for 2 hours and 40 min. dated Oct. 7, 1972 at the half time rate under rule 20(a).

(b) Carrier now be required to allow Mr. Hodge this overtime as presented on form 1171. (Carrier file: 79-8-99)

Claim No. 2

(a) On or about Sept. 27, 1972 the Carrier violated the currant Agreement between the Brotherhood of Railroad Signalmen and the Chicago and North Western Transportation Company, when the Signal Supr. returned the overtime slips of Mr. J. D. Foote, signal Mtnr. at Glencoe, Illinois, for 2 hours and 40 min. dated Sept. 16, and the other one for 3 bra on Sept. 17, 1972 all at the half-time rate.

(b) Carrier now be required to allow Mr. Foote this overtime as presented on Form 1171. (Carrier file: 79-8-107)

OPINION OF BOARD; After thorough review of the entire record, we find no procedural violation which precludes our consideration and disposition of the matter based upon the merits of the claim.

On or about September 5, 1972, two (2) separate, adjacent signal maintenance territories were combined.

On September 16 and 17, 1972, F (headquartered in Glencoe) was required to clear signal trouble on the former Lake Bluff territory. On October 7, 1972, H (headquartered at Lake Bluff) was required to work in the former Glencoe territory. In both instances, the employees sought (and were denied) additional one-half (½) time under Rule 20(a):

"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 signalmen 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."

There is no question that a cold reading of Rule 20(a) would deny additions1 compensation because neither Claimant was required to perform work outside of his territory. At the same time, there is Little question that such an assignment, if made prior to the consolidation of territories, would have resulted in entitlement to the additional compensation.

Unquestionably, the claims arose as a result of combining the formerly separate signal maintainer territories (with separate headquarters) into a single territory without combining headquarters. Claimant8 contend that ". ..a territory with multiple headquarters is not within the agreement, nor has it been in the history on the property."

Stated differently, the Organization concedes that territories may be combined, but such a combination - without a concurrent combination of headquarters - violates the agreement, because such an action amounts to an obvious circumvention of the dictates of Rule 20(a).

Clearly, Rule 20(a) does not proscribe the consolidation under review. We have thoroughly scrutinized the entire record and the rules cited therein, but we are unable to find any language which compels the conclusion sought by Claimants. While the Board is not unmindful of the Organization's argument concerning Rule 2, we cannot conclude that in and of itself it precludes the type of consolidation here in issue.

Moreover, we have considered the Organization's assertion that the obvious reason for consolidation was to circumvent Rule 20(a) and to accomplish, by indirection, a result which was not directly permissible. The record fails to present sufficient evidence to establish such a motive on the part of Carrier. We will dismiss the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the patties 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.

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 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 and I dissent.

W. W. Altus, Jr.
Labor Member