

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20811
Docket Number X-20611

Joseph A. Sickles, Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(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 over-time as presented on form 1171. (Carrier file: 79-8-99)

Claim No. 2

(a) On or about Sept. 27, 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 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 over-time 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 ($\frac{1}{2}$) time under Rule 20(a):

"20(a) An **employee** 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** additional 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.

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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;

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. Paulsen
Executive Secretary

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

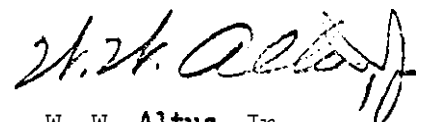
Dissent to Award **20796**, Docket **SG-20615**
Award **20797**, Docket **SG-20616**
Award **20802**, Docket **SC-20457**
Award **20811**, Docket **SG-20611**

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