NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20972

THIRD DIVISION Docket Number SG-20835

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Texas and Pacific Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on The Texas and Pacific Railway company:

For and on behalf of the following named members of Signal Gang 1661, Centennial Yard, for an additional eight (8) hours pay each at time and one-half their respective straight time hourly rate; account Superintendent C. E. Dettmann assigned a Maintenance of Way Section Gang (a foreman and five men) to assist in shoeing the master retarder at Centennial Yard on March 28, 1973, resulting in a flagrant violation of the Carrier's Safety Rules and the Scope Rule and Rule 62 of the Signalmen'8 Agreement.

Employe	Position	S.T. Rate of Pay
R. W. Boyd	Foreman	$1132.96 per mo.
J. P. Burger	Leading Signalman	1115.12 " "
J. L. Shelton	signalman	5.27 " hr.
R. D. Dickey	"	5.27 " "
D. 0. Jones	"	5.27 " "
J. A. Boyd	"	5.27 " "

(Carrier's File: G-315-72)

OPINION OF BOARD: On March 28, 1973 Claimants, constituting signal Gang No. 1681, were assigned the task of installing new wear plates, or shoes, on the master retarder at Carrier's Centennial Yard. The Superintendent instructed the Maintenance of Way Section Gang to assist the signal gang in this task which took a total of about three hour@. The Superintendent was informed by the Signal Gang Foreman that this assignment was in violation of the Signalmen's Agreement but the Superintendent indicated in the interest of getting the work done expeditiously the assignment would be carried out. The work of installing new shoes on the master retarder was required not less than every six weeks and waa recognized to be work accruing to signal forces: it is known that the wear plates were adjusted approximately weekly by the insertion of shims to compensate for wear. Carrier stated that the Centennial Yard, which is the hump yard, was shut down every Tuesday morning for the heavy maintenance of equipment including the retarders.

Carrier claims, and we agree, that there is no validity to Petitioner's contention with respect to the safety rules. The key rule involved in this dispute is Rule 62, which provides:

"RULE 62. Except in extreme emergencies, employes covered by this agreement will not be expected to perform work of any other craft nor will employes of any other craft be required to perform work coming within the scope of this agreement. This does not apply to maintenance of electrical *equipment* on water pumps *or* to testing outside telephone during regular working hours."

Carrier states that there was considerable pressure in March 1973 due to very heavy grain movements. It is stated that 1. trains were held out of the yard on *a* daily basis because of congestion; 2. trains were frequently delayed in departing for lack of *power;* and 3. cars were delayed waiting to be humped. Carrier contends that in an effort to reduce the delays means were sought to reduce the time the hump would be shut down for maintenance. To accomplish this goal, the Superintendent, as an experiment on March 28th, assigned members of the track gang to assist in the reshoeing operation to pmvide any additional manual labor which might be helpful, Carrier stated that "The experience revealed that it took approximately the same length *of* tine to accomplish the work with additional manpower and trackmen have not since been made available to assist the signal gang in the performance of the work". Carrier, by implication in its submission, indicates the existence of an emergency due to the delays in the humping operation caused by the shoe installation on the retarder. In its rebuttal statement and in subsequent. argument before the Referee, Carrier specifically alleges that it acted properly in the assignment of the *track* gang due to "extreme emergency" caused by the instant maintenance job which caused the yard to be shut down.

Petitioner claims that there was m *emergency* since normal maintenance was the only work involved. Further it is contended that if Carrier desired to reduce the time required for the job, it should have called upon additional signal employes rather than employes not covered by the Agreement.

With respect to the issue of emergency, it is illogical for this Board to hold that activity which is admittedly regular repetitive maintenance work, is *properly* characterized as an "extreme emergency". By the same logic, any maintenance work which takes regular equipment out *of* service *for* preventitive *or* other maintenance, could be tensed emergency work. Although we understand Carrier's desire to minimize the time the yard was inoperative due to maintenance requirements, the desire for shorter time cannot be translated into an emergency situation. Additionally, it is noted that the issue of emergency was never directly raised on the property during the handling of this dispute.

The problem of the penalty aspect of the Claim is once more raised before this Board. However, in this instance the facts are somewhat different than in prior cases. The admitted evidence indicates that the addition of the *track* force did not reduce the mrmal period of time *spent* by the Signal

Gang to complete the assigned task. There is no basis for assuming that there was a loss of earnings or work opportunity for these Claimants under the circumstances herein. We must conclude that although there was a clear violation of Rule 62 and the Scope Rule, under the peculiar circumstances of this dispute, no monetary claim may be assessed. The Carrier was in fact penalized by paying the track forces for three hours of totally non-productive *work.*

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

That the parties valved 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 appmved June 21, 1934;

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 except that no monetary payments will be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: G.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 27th day Of February 1976.