

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21494
Docket Number SG21357

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: { **Brotherhood** of Railroad Signalmen
(Louisville and Nashville Railroad **Company**)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad **Company**:

On behalf of Signal Foreman H. B. Williams, Birmingham Division **Signal Gang #13**, headquarters Boyles, Ala., for 8 hours and 30 minutes account not called on Sunday, August 26, 1973, to direct the work of men assigned to work under his direction. [Carrier's file: G-265-12]

OPINION OF BOARD: In this dispute it is alleged that the Agreement was violated in that a signal **foreman**, Claimant herein, was not called to work in connection with signal repairs on a **Sunday**. The work in question was performed by two Signalmen from Claimant's regular gang working in conjunction with Signal Maintenance forces, under the direction of an Assistant Signal Supervisor. The work was caused by a derailment which resulted in the destruction of certain **signal equipment**.

Carrier contends that the Assistant Supervisor was acting only in a supervisory capacity, which was appropriate and that the work in question was normally performed by signal maintainers without a foreman being present. Petitioner states that one of **the** employees present indicated that he was instructed to perform work by the Assistant Signal Supervisor; this was the only evidence presented by Petitioner.

It is well settled that it is not a violation of an agreement for a supervisor to instruct employees as to what work is to be performed. In **fact, it** is the prerogative of Carrier to determine the **amount** of supervision required for any work. As we said in Award **18580**:

"It is well established by prior awards of this Board that unless specifically provided in the Agreement, Carrier has the sole and exclusive right to determine when and under what circumstances a foreman is assigned to supervise a group of employees Nowhere does the Agreement require the service of a foreman in **all** circumstances...."

To prevail, the Organization has the burden of proving that the Assistant Supervisor was *de facto* performing the duties of the Claimant's position (Award No. **19864**). Petitioner has not satisfied its burden of proof and hence the Claim must be dismissed.

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 Petitioner has not met its burden of proof.

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 15th day of April 1977.

