

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21495  
Docket Number Xi-21360

Irwin M. Lieberman, Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE:

[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 Signalman A. W. Wallace for 8 hours overtime pay for October 22, 1973, account Signal Foreman G. E. Denton driving a company vehicle from Park City, Kentucky to Memphis, Tennessee.

OPINION OF BOARD: The dispute herein was triggered by a foreman driving a Carrier owned van from his home to a new work location for his gang on one of his accumulated rest days, October 22, 1973. The record indicates that the foreman customarily drove the van in the course of his work since its purchase, at least a year earlier. The Claim herein is that a signalman, assigned to the same gang, should have driven the van and hence eight hours pay at time and one half is claimed.

Petitioner relies on Rule 3 primarily, in support of its position. That Rule provides, inter alia, that:

"A foreman may make inspection or test of the job under way but shall not take the place of another employe."

Petitioner argues that driving a vehicle is work and that when the foreman in question drove the vehicle from one work point to another he took the place of another employe thus violating Rule 3.

Carrier asserts that this dispute does not involve the transporting of signal materials, nor does it involve the operation of the van by someone outside the Agreement. Carrier cites a series of awards by this Board wherein claims were denied when supervisors and others outside the Agreement operated trucks for the delivery of signal materials. One of those disputes involved the same parties and was concerned with an assistant signal foreman driving a vehicle with signal materials. In that award, Award No. 10008, in denying the arguments of Petitioner, we said:

"Nothing is contained that gives the exclusive right to Signalmen to drive trucks as alleged here, and we find nothing before us to support the contention that such work is exclusive to Signalmen."

Carrier argues further that the transporting of a Carrier vehicle from one

location to another, on the highway, is not vested exclusively in signalmen. It is also noted by Carrier that no claim was made by the Organization for the foreman driving the vehicle from the old work location to his home on October 17, 1973 or for the frequent occasions he has driven the van in the past. Carrier concludes that this indicates a concession by the Organization that the signalmen do not have the exclusive right to drive the van.

We have previously held that when there is a jurisdictional question between the **employees** of the same **craft**, represented by the **same** Organization, the burden of establishing an exclusive right to the work in **question** is even more heavily on Petitioner; see Awards 13083, 13198 and 20425. In this **dispute** the key question is not only whether the work should have been performed by an hourly rated **employee** but also whether it indeed was work reserved to the craft under the Agreement. There is no persuasive evidence on either point in this record and therefore the claim must be denied.

**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 Agreement was not **violated**.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1977.

