NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21568
THIRD DIVISION Docket Number SG-21481

Robert J. Ables, 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:

On behalf of Signal Maintainer M. F. Eubanks, Shreveport, Louisiana, for five hours at one-half his straight time hourly rate account required to cut trees and brush on the right-of-way to clear signal trouble during working hours on June 10, 1974.

/General Chairman file 141. Carrier file: G 315-94./

OPINION OF BOARD: There is no dispute that the signal maintainer who is the claimant here cut trees and brush for 5 hours during working hours on June 10, 1974 on the right-of-way to clear signal trouble.

The question is whether, as contended by the employes, the pay of the claimant should be increased by one-half of his straight time hourly rate because the signal maintainer was required to work out of his classification in an emergency and because of a commitment in a letter by the Superintendent, Signal & Communications to the Organization to pay for such work at the time and a half rate; or whether, as contended by the Carrier, such work having been performed by the signal maintainer during regular working hours, he should not be paid at the premium rate because the Superintendent, Signals & Communications did not have authority to change the collective bargaining agreement of the parties which, as interpreted by the Carrier, already permitted assignment of such work to the claimant.

The letter in issue, dated December 22, 1969, provides in its entirety:

"Mr. J. J. Morris
General Chairman
Brotherhood of Railroad Signalmen
1301 Ravenwood Drive
Arlington, Texas 76010

Dear Mr. Morris:

This will acknowledge your protest of having signal

"maintainers used to re-habilita'ce signal and communications pole lines.

The work of changing poles will be performed by signal construction forces in the future.

Also, this is to inform you that signal maintainers will not be required to cut brush except in emergencies, and when this is done, time and one-half will be paid.

Also, signal gangs will not be used to cut brush on the right-of-way except as necessary to change poles.

Yours truly,

J. R. WILSON /s/

Supt. Signals & Communications

cc: Signal & Comm. Supvs.,
F. W. Burkholder
L. E. Stanley
L. C. Campbell
J. W. Uselton"

The claim should be sustained on the strength of decisions by this Board in Award No. 20979 and Award No. 20980. In these cases the claim was allowed under the same circumstances and involving the same parties. Payment of the claim however was ordered at the pro-rata and not overtime rate because the letter commitment of the Superintendent, Signals & Communications with respect to signal gangs (as distinct from signal maintainers) did not stipulate that pay would be based on the overtime rate. Implicit in those awards is the conclusion that, if the work had been performed by signal maintainers, the award for pay would have been at the overtime rate because of the specific provision in the letter on December 22, 1969 from the Superintendent, Signals & Communications that:

"Also, this is to inform you that signs3 maintainers will not be required to cut brush except in emergencies; and when this is done, time and one-half will be paid.

The Carrier argues strongly that the claim is based on the erroneous theory that a superintendent who is not the person authorized to make agreements for the Carrier can make a binding agreement changing the "clear terms" of the basic agreement. Among other awards supporting this proposition the Carrier cites Award No. 21182, between the same parties involved in the present dispute, in which the claim for pay at

the overtime rate was denied because the work performed (relocating certain poles of a communication line) was off the property of the Carrier, thus any past practice on the property with respect to payment for such work at the overtime rate did not apply. And, in denying the claim on this basis the Board added that it held to the established principle that payments by operating officers without the knowledge or final approval of the officer authorized to make and interpret the agreement are not binding.

The Carrier in this case is arguing a good theory but it is not applicable here.

To the Carrier's argument that the Superintendent, Signals & Communications did not have authority to agree to pay at the overtime rate for the work in issue despite his clear letter to the contrary and past practice in paying at the overtime rate for such work, as in his decision of July 13,1970 to pay the claim of a different signal maintainer for 22 hours which were due him on "account being required to cut trees and brush to clear signal trouble during regular working hours," it may be said that such superintendent is not so much changing the basic agreement of the parties as implementing that agreement and doing the job he is charged by the Carrier to do. This job is to make first line decisions on grievances by employes under his jurisdiction.

As the employes state, the very process of adjustment of minor disputes and grievances under the jurisdiction of this Board would be undermined if a clear decision by a supervisor cannot be relied on by the employes as a decision of the Carrier itself, particularly where, as here, there is a reasonable question as to which classification of employe has jurisdiction to do required work. Thus, the superintendent was not dealing with "clear terms" of the collective bargaining agreement.

The Carrier cannot properly raise any question of surprise about the action taken by its superintendent since at least four other management officials received a carbon copy of the letter of December 22, 1969 responding to the "protest" of the Organization against the work in issue. Also, the subsequent action to pay claims at the overtime rate for the work in issue had to be processed through other departments of the Carrier, thereby increasing the number and variety of managers who knew or should have known what policy the Carrier had committed itself to with respect to the work in dispute. Not having changed this policy for several years after it was established by one of its managers would lead to the fair conclusion that top management at least had acquiesced in the policy.

Most important is that the superintendent actually surrendered no power in authority of management and therefore did not change the basic Agreement. By the very terms of the letter, management controlled all circumstances which could lead to a dispute on pay.

If it is first remembered that the signal maintainers concluded that cutting trees and brush along the right of way was not their work and they did not want it, the point should be clear that there could be no pressure from the employes to do this work. Second, all that superintendent Wilson did was reserve the right to use signal maintainers "in emergencies". Since management determines what constitutes an emergency there is no way, based on the contract rights, employes can induce a situation requiring them to work at premium rates. In short therefore, Wilson's commitment was an executory agreement at best since the Carrier retained all prerogatives in assigning the work in issue. And if it exercises those prerogatives, there is no reason under the basic agreement why it cannot pay for the work on the overtime basis - just as the superintendent agreed to do.

Decisions by a designated manager acting in a responsible way with respect to a reasonable difference of opinion between the employes he supervises should be honored for all the reasons that make for good labor-management relations. The superintendent said he would pay at the overtime rate for the work in issue. The Carrier should back him up.

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 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 Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June 1977.