

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23959  
Docket Number SG-23944

Ida Klaus, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(southern Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al:

(a) Carrier violated and continues to violate the current Signalmen's Agreement, particularly Scope Rule 1 and Rule 2 (a), when they permitted C&S Supervisor James Davis to take the place of a foreman and supervise a group of employees, other than foreman, included in Rule 2. Supervisor Davis has no contractual right in the Signalmen's Agreement to take the place of a foreman.

(b) Carrier should now be required, because of this violation, to pay Signalman C. B. Wham foreman's pay, based on 213 hours per month, in addition to any pay he has earned or will earn as a signalman for as long as Supervisor Davis takes the place of a foreman.

(c) Claim is to be retroactive sixty (60) days from October 9, 1979, and is to continue for as long as the employees are worked as group without a foreman as specified in Rule 2 (a)."

(Carrier file: SG-418...General Chairman file: SR-138)

OPINION OF BOARD: The claim asserts a violation of both Scope Rule 1 and Classification Rule 2 (a) of the Signalmen's Agreement by the assignment of a C&S Supervisor, not covered by the Agreement, to a group of signalmen who were performing signal work.

The Organization maintains that, instead of using the supervisor, the Carrier should have assigned an employee covered by the Agreement, that employee being the senior qualified signalman in the group.

The Carrier assigned five signalmen from three different headquarters to work jointly on a single project of installing electro-code track circuits to replace an existing pole line near Chester, South Carolina. A foreman was not provided. A C&S Supervisor (James Davis), who was not classified in the Signalmen's Agreement, was assigned to the group. The Organization has asserted and the Carrier has not denied, that Davis supervised the signalmen while they were performing the electro-code installation work.

The central issue on which the dispute is whether, as the Organization contends, Supervisor Davis took the place of a signal foreman by reason of the **fact** that he was assigned to, **and** did, supervise the signalmen group.

The Organization refers to the range or **work** reserved to signalmen in **Scope Rule 1 and** to the **definition** of "Signal Foreman" contained in **Classification Rule 2 (a)**. The latter rule states:

"(a) Signal Foreman: (**Effective September 16, 1946**)

An employee assigned to **supervise a group** or employees (other than foremen) included **in** this Rule 2, and who is not required to **regularly perform** any of the work which he supervises.

A foreman may, as **part** of his duties, **make** inspections **and** tests **in connection** with his work, but shall not take the place of another employee covered by this **agreement**."

The Carrier urges denial of the claim, for the reasons that:

(1) the **claim** is **not** supported by the **Agreement**; (2) the **Organization** has failed to **meet** its burden of proving a **contractual** requirement on the Carrier's part to provide a **foreman**.

More specifically, the Carrier asserts **that Rule 2 (a)** simply **defines a signal foreman**. The rule, it says, does **not in itself** create a position of signal foreman or require the **assignment of one**. Those **functions** are reserved to the managerial **discretion** of the Carrier to determine its **supervisory requirements**. **Here, the** Carrier states, there **was no** position of foreman in existence and the Carrier properly **determined** that **none** was needed.

Hence, according to the Carrier, Supervisor Davis **did** not take the place of a foreman. The Carrier cites **as binding precedent** in the instant dispute the **Award of Public Law Board No. 2044**, decided on this **property**, in which, the Carrier asserts, **similar claims** in similar circumstances **were presented**.

On the **entire record** and arguments made, the Board concludes that the Carrier violated **Scope Rule 1 and Classification Rule 2** of the **Signalmen's Agreement**, as alleged.

The Board agrees **with** the Carrier that **Rule 2 (a)** in itself does not require the Carrier to **provide supervision**. The issue in this dispute, however, is **not** whether the Carrier was required to **provide** supervision. The real issue on this record is whether, having **determined** that supervision was needed, the Carrier made a proper **supervisory assignment** under the **Signalmen's Agreement**.

The operative facts are that the Carrier did assign someone, i.e., a Supervisor, to the group and that he supervised them while they were performing signal work. In the Board's view, those facts effectively brought the Supervisor within the clear language of Rule 2 (a), which defines who a "Signal Foreman" is. Thus it appears that, while in a status outside the coverage of the Signalmen's Agreement, the Supervisor was actually performing the functions of a signal foreman as described in Rule 2 (a). Therefore, in the Board's opinion, he did take the place of a signal foreman and performed work restricted to a signal supervisor. In the Board's opinion, such a substitution tends to undermine the essence of the Scope Rule.

The Board has carefully considered the Award of Public Law Board No. 2044 and notes that there the controlling facts and central issue were not the same as those now before us. There, the signal employees were working on a project without any assigned supervision and the Organization contended that one of the group should have been paid as a signal foreman. We therefore conclude that the award provides no applicable precedent here.

The claim will be sustained.

**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 violated.

A W A R D

claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By order of Third Division

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of August 1932.