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S.D.P.
NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24149
Docket Number SG-23944

Ida Klaus, Referee

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

STATEMENT a 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 Carriers 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 turns 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 of 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 of 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. He simply supervised these men as a group in the same way he normally had done on a regular basis as their C&S Supervisor when they worked alone at their regular headquarters.

The Carrier cites as binding precedent in the instant dispute the Award of Public Law Board No. 2044 and the recent Award Number 23903 of the Third Division, both decided on this property. The Carrier asserts that similar claims in similar circumstances were presented and denied in both awards.

On the entire record and arguments made in the submissions and in oral hearing, the Board concludes that the Carrier violated Scope Rule No. 1 and Classification Rule No. 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 directly while they were performing signal work as a group. In the Board's view, these facts brought the Supervisor within the clear language of Rule 2(a), which defines who a "Signal Foreman" is. Thus it significantly 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). Even if he had not been expressly instructed to act as a foreman, it is what he did, notwithstanding he was designated, that is controlling. The record does not support the Carrier's assertion that Davis simply performed his usual C&S supervisory duties.

Accordingly, the Board concludes that Davis 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 both awards cited by the Carrier and notes that in both the controlling facts and central issue were not the same as those now before us. In both prior instances, the signal employee were working on a project without any assigned supervision. The Organization contended that supervision was necessary and that one of the group should have been designated and paid as a signal foreman. We note also the emphasis in Award Number 23903 that the essential allegation or the claim, that the men had worked as a "gang", was not supported by the record. In our opinion, the awards provide no applicable precedent here.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of February 1983.