NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25117

THIRD DIVISION Docket Number SG-25193

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Consolidated Rail Corporation

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation:

System Docket 1837
Northeastern Region Case 06-82-M 003

On behalf of D. Miller, J. Osika and R. Sander1 for eight (8) hours at the time and one-half rate for December 25, 1981, account the Trouble Desk positions were blanked on such date and the work was assigned to the Chief Dispatcher.

OPINION OF BOARD: The Organization contends that Carrier violated the Agreement's Scope Rule and Paragraphs 1, 3 and 4 of the November 16, 1978 Call Out Agreement when it assigned trouble desk work at Utica, New York to the Chief Dispatcher on December 25, 1981. In particular, it asserts that the blanking of the Trouble Desk Position on the aforesaid date denied agreement protected work to the Claimants named in the position and reflected an impermissible assignment of covered work. The Organization does not contest Carrier's right to blank positions per se, but asserts that this right is not absolute. It notes that the Division has consistently held that a regular employe is entitled to be used if the work of a position is required to be performed on a holiday and avers that these holdings are controlling herein. See for example Third Division Award Nos. 3891 and 18805.

Carrier contends that the Organization has not demonstrated that work accruing to Claimants was performed by other employes on December 25, 1981 and asserts that the claim lacks specificity and substantiation. It argues that no work was performed on the first and third tricks of the Trouble Desk Position, but acknowledges that two trouble calls not lasting more than ten (10) minutes were made by the Chief Dispatcher on the second trick. It notes that Claimant D. Miller was paid for this work consistent with the compensatory requirements of Agreement Rule 4-B-2(b) and avers that this payment is a reasonable recognition of this situation. It maintains that the two (2) calls were hardly foreseeable and of such a critical nature to qualify as continuous predictable work and argues that it was not precluded from blanking the position.

In our review of this case, we concur in part with the Organization's position. The record shows that no work was performed during the first and third tricks, but by the parties own admission, two trouble calls were made during the second trick. Since this work is exclusively performed by Agreement covered employes and specifically articulated in the Scope Rule, we have to conclude as a matter of strict contract propriety that a violation occurred during the second trick. The work belonged to the second trick Claimant.

While Carrier asserts that it was not barred from blanking a position, it is on the other hand not permitted to avoid the clear language of the Agreement. The duration and predictability of the work is of no consequence when the Agreement pointedly reserves this work to the Signalmen.

In the instant case, two trouble calls were made during the second trick, which by definition accrued to the Signalmen, and it was an Agreement violation when it was performed by the Chief Dispatcher. We agree with Carrier's recognition that some compensatory adjustment was necessitated by its actions, consequently, we find that Rule 4-B-2(b) is applicable to this situation. We are not persuaded that the other Claimants are entitled to any compensation since no work was performed during the first and third tricks.

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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1984.