

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25932

Docket Number SG-25849

George S. Roukis, 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:

General Chairman File: SR-307. Carrier File: SG-569

(a) Carrier violated and continues to violate the Signalmen's Agreement, particularly Scope Rule 1 and Rule 2 (a), when they instructed and permitted C&S Supervisors to take the place of a foreman and supervise a group of employees, other than foremen, included in Rule 2 who are installing electrocode or microcode to replace existing track circuits, line circuits and signal pole line between Spartanburg, S. C. and Tryon, N. C., starting on February 23, 1983 and is continuing.

(b) Carrier should now be required to compensate the senior Signalman of the group (J. T. Lewis from February 23 to March 21, 1983 and R. H. Lyda from March 21 to April 15, 1983 and continue thereafter until violation is stopped) at the foreman's rate of pay based on 213 hours per month, in addition to any other pay they earn, for as long as Carrier uses a C&S Supervisor to take the place of foreman by supervising a group of employees covered by Rule 2, denying Claimants an opportunity to work a job with a higher rate of pay.

(c) This claim is filed as a continuing claim for as long as the employees are worked as a group with a C&S Supervisor taking the place of a foreman as specified in Rule 2 (a) or until a foreman is established to supervise the work of this group of employees."

OPINION OF BOARD: The basic facts in this dispute are as follows: From February 23, 1983 through April 14, 1983, Signal employees were assigned and utilized to install electrocode track circuits to replace an existing pole line from Tryon, North Carolina to Spartanburg, South Carolina. Four Signalmen, one Signal Maintainer and one Assistant Signalman were assigned on a periodic basis to work on this project.

According to the Organization's petition, Carrier violated Rules 1 and 2(a) when two C&S Supervisors were permitted to take the place of a Foreman and supervise a group of employees other than foremen. It asserts that consistent with Third Division Awards 24149 and 23959 involving the same parties and the same adjudicative issue, it was improper for the Supervisors to take the place of a Signal Foreman. The Organization submitted letters from three Signalmen who averred and attested that the Supervisors performed Foreman's work.

Carrier disputes the Organization's Claim that the Agreement was violated, arguing instead that the Agreement does not require the appointment of a Foreman. It avers that neither supervisor acted as a Foreman on the claimed dates, but merely performed their usual duties as Communications and Signal Department officials. It notes that contrary to the duties of a Foreman, which entail direct and continual supervision of a Work Gang, the normative work activities of a Supervisor are general and broader. It acknowledges that the Signal Supervisors did occasionally spend time on the project and gave advice and instructions as needed, but it distinguished this work from the direct and sustained supervision required by the Foreman's position.

In our review of this case, we agree with the Organization's position. The facts in this case are similar to the facts in Third Division Award 24149 and thus, this Award is controlling. (See also the companion Third Division Award 23959.) It might well be that the two Supervisors performed more generalized duties on the days they supervised the Signal employees, but at the time they were at the work site of the Signal Gang, they gave specific direction. As we indicated in Third Division Award 24149, it is not the position's designation that is the pivotal defining determinant, rather it is the type of work performed. Based on the record, we are persuaded that the two Supervisors acted as Foremen when they interacted and gave instructions to the Signal employees.

On the other hand, we concur with Carrier that the Organization has not contested the amount of time spent by both Supervisors on the project and the Claim is restricted to this explicit measurable period of time. In effect, we find that one Supervisor spent 24 hours on the project and the other Supervisor spent 3 hours and 5 minutes. Claimants are entitled to the Foreman's rate of pay for only this time. Upon the entire record and arguments made in the submissions and in oral hearing, the Board concludes that Carrier violated the cited Rules.

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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

A handwritten signature in dark ink, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1986.