

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29772
Docket No. SG-29587
93-3-90-3-540

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

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

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (CONRAIL):

Claim on behalf of C. L. Campbell, for payment of ninety-nine (99) hours pay at his pro-rata rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope Rule, when it allowed or permitted a signal supervisor to perform signal work on March 10, 13, 15, 16, 20, 22, 23, 27, 29, and April 10, 18, 19, and 20, 1990." Carrier file SG-108. BRS Case No. 8079-CR.

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

At the onset, this Board notes that the Organization's October 22, 1990 notice of its intent to file an ex parte submission with this Division indicates that the Carrier's alleged violation occurred during March and April, 1990. According to the May 8, 1989 claim, the alleged violations occurred during March and April, 1989. We hold that this error in stating the claim dates was due to clerical inadvertence and constituted a harmless error. We specifically find that the mistaken claim dates in the Organization's ex parte notice did not prejudice the Carrier.

However, our holding on this issue is expressly restricted to this particular case.

The Organization asserts that the Carrier violated the applicable scope rule because an Assistant Signal Supervisor performed Test No. 22(c) on grade crossing protection devices at twenty-five locations during March and April, 1989. The Carrier responds that the Supervisor accompanied the Maintainer on some claim dates simply to supervise the Maintainer's work and to ensure that the Maintainer conducted the tests in accord with the Manual of Uniform Traffic Control. To redress this alleged scope rule violation, the Organization petitions that the Board compel the Carrier to pay Claimant, an Assistant Foreman/Inspector at Elmira, New York, ninety-five hours of straight-time and 1.5 hours of overtime pay.

After carefully weighing the evidence of record, this Board concludes that the Organization failed to meet its burden of proving, with sufficient evidence, that the Assistant Supervisor stepped beyond the customary role of a supervisor and intruded into work exclusively relegated to covered Signal employees by the scope rule. Generally, this Board concurs with the Organization's argument that the actual performance of the Rule 22(c) test is within the ambit of the testing of signal apparatus as set forth in the scope rule and so, such work is exclusively reserved to covered employees. Nonetheless, a supervisor may legitimately instruct, oversee, and approve of a Maintainer's performance of the test. The supervisor may also assist the Maintainer with the testing work if the supervisor is training the Maintainer. In this case, there is inadequate evidence that the Assistant Supervisor actually performed any tests.

Therefore, this claim must be denied.

In reaching our decision, this Board did not consider the November 12, 1989 statement from the Maintainer alleging that the Assistant Supervisor jointly, with the Maintainer, tested crossing protection devices on the Corning secondary during the two months in question. The Organization wrote a letter dated June 29, 1990, to the Carrier's Senior Director of Labor Relations, stating that the Maintainer's November 12, 1989 statement was attached to the correspondence. The Carrier promptly notified the Organization that it did not receive the Maintainer's statement with the June 29, 1990 letter, and the statement was not presented at the December 12, 1989 conference on the property. Prior to filing its ex parte notice with this Division, the Organization had sufficient time to forward the Maintainer's statement to the Carrier. Since the statement was not properly presented on the property, we must disregard the statement.

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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin sb
Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 20th day of September 1993.