

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30611
Docket No. SG-30750
94-3-92-3-549

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

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

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk Southern Corporation:

Claim on behalf of Floating Signalman G. L. Pate, headquarters Biltmore, NC, who was the senior employee of the group of five signal employees working on the project at Orangeburg, SC, for the following:

- (a) Carrier violated the Signalmen's Agreement, particularly Scope Rule 1 and Rule 2, when it permitted Signal Supervisor T. Lane to take the place of a foreman on March 18, 19, 20, and 21, 1991, supervising the work of a group of employees included in Rule 2, denying the Claimant of foreman's pay for the week of March 18, 1991.
- (b) Carrier now be required to compensate Floating Signalman G. L. Pate, the senior employee of the group of five employees installing conduit and signal cable under highway 178 at Orangeburg, SC, in the amount of \$693.20, which is the amount a signal foreman was paid for the week of March 18, 1991, and claim is to be in addition to any other pay he has received or due him because of foreman's pay he was denied when Carrier permitted Supervisor Lane to take the place of a Signal Foreman. Carrier file SG-GNVL-91-10. GC File SR-1991. BRS Case No. 8753-SOU."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The facts in this matter are not controverted. On four days commencing March 18, 1991, Carrier used five Signalmen, working together, to install cable under a highway at Orangeburg, South Carolina. These five men were supervised by a Signal and Electrical Supervisor, a position not covered by the Agreement.

The Organization contends that under the application of Rule 2 of its Agreement, supervision of the signal crew should have been performed by a Signal Foreman assigned under the Agreement.

The Carrier contends that it has not bargained away its inherent managerial right to determine its supervisory requirements and under what circumstances a Foreman will be assigned to supervise a group of signal employees. In this case, it argues, no one performed the duties of a Foreman, because the work was of the type routinely performed by signal employees on their respective territories, which did not require direct supervision.

This issue has been before this Board previously, in a case involving these same parties. In Third Division Award 23959, the Board concluded:

"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 does not find Award 23959 to be in error. It will be followed here.

The Claim will be sustained for the difference between what Claimant was paid and that which he would have earned at the Foreman's rate for the four days that the five Signalmen worked together as a crew, i.e., March 18, 19, 20, and 21, 1991.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 2nd day of December 1994.