

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31296
Docket No. SG-31298
95-3-92-3-867

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Railroad:

Claim on behalf of K.C. Sedlak for payment of the difference between the Assistant Signalman's rate and the Signalman's rate for 152 hours, account Carrier violated the current Signalmen's Agreement, particularly Rule 2, when it failed to compensate the Claimant at the Signalman's rate for service performed in that classification between July 1, 1991, and August 1, 1991. Carrier's File No. SI 91- 11-07. General Chairman's File No. S-30-91. BRS File Case No. 8886."

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 basic facts of this case are not in dispute. During the time period encompassed by the claim, Carrier's Signal Construction Crew No. 153 consisted of a Foreman, a Signalman and two Assistant Signalmen. Claimant was the senior of the two Assistant Signalmen. There is no contention or indication relative to Claimant's ability or qualifications. From July 1 through July 3, 1991, the Signalman position was vacant because the incumbent was on vacation. From July 8 through July 18, 1991, the Signalman position was vacant because the incumbent was temporarily working as the crew Foreman. From July 29 through August 1, 1991, the Signalman position was vacant due to the fact that the incumbent had bid for and been awarded a Signalman position on another crew.

The claim which forms the basis of this case alleges that during these three time periods the senior Assistant Signalman was entitled to receive the Signalman's rate of pay. The Organization bases their claim on the language and provisions of Agreement Rules 2.D, 2.P, 16 and Appendix "A" (Article 10, Paragraph A) of the National Vacation Agreement.

The claim was denied by Carrier on the basis that there was no rule or agreement which required Carrier to pay the Signalman's rate to an Assistant Signalman when the Signalman assigned to a gang was absent from his position. Carrier argued that Claimant did not perform the work of the Signalman but rather "he performed his normal duties of an Assistant Signalman and did not assume more responsibility than he ordinarily carried when performing those duties."

The Agreement Rules which are of particular concern to the Board in the determination of this case are as follows:

"RULE 2. CLASSIFICATION

* * * * *

D. Signal Construction Crew Foreman: An employee assigned to supervise and work with a crew of signalmen covered by this agreement, with or without a leading signalman.

Such an employee will not be required to perform work over which he has supervision when the crew over which he has supervision consists of five (5) or more employees.

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M. Signalman: An employee assigned to perform work pertaining to the construction of signal apparatus and appurtenances used in connection therewith.

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P. Assistant Signalman - Assistant Signal Maintainer: An employee in training for the position of relay repairman, signalman or signal maintainer working with and under the direction of a relay repairman, signalman or signal maintainer.

* * * * *

Note: This rule shall not be construed to prevent employees in one class from regularly performing work in another class incident to the duties of their assignments."

"RULE 16 - FILLING A HIGHER RATED POSITION

An employee required to fill the place of another employee receiving a higher rate will receive the higher rate for time so assigned except when an assistant signalman or assistant signal maintainer is required to relieve another assistant signalman or assistant signal maintainer he will receive his own rate, or when a helper is used to relieve an assistant signalman or assistant signal maintainer, he will receive the assistant's rate based on his own experience. An employee required to fill temporarily the place of an employee receiving a lower rate will not have his rate reduced."

"APPENDIX "A"
NONOPERATING NATIONAL VACATION AGREEMENT

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Article 6 - The carriers will provide vacation relief workers but the vacation system shall not be used as a device to make unnecessary jobs for other workers. Where a vacation relief worker is not needed in a given instance and if failure to provide a vacation relief worker does not burden those employees remaining on the job, or burden the employee after his return from vacation, the carrier shall not be required to provide such relief workers. (From Section 6 of 12-17-41 Agreement)

* * * * *

Article 10.A. - An employee designated to fill an assignment of another employee on vacation will be paid the rate of such assignment or the rate of his own assignment, whichever is the greater;"

The single constant factor in this case is the undisputed fact that during all three of the time periods of the claim, the Signalman position on the Signal Construction Crew was vacant.

From a review of the case file, the Board is convinced that the provisions of the National Vacation Agreement are not involved in this dispute. Any contention to the contrary by either party is rejected.

The language of Rule 16 is clear and definitive. It applies only to a situation in which an employee is "required to fill the place of another employee receiving a higher rate of pay." The Organization's argument to the Board is based on the contention that Carrier "failed to assign the Claimant to a vacant position of Signalman" This argument is at odds with the concise language of Rule 16. If Carrier "failed to assign" Claimant to the vacant position, Claimant could not have been "required to fill" the vacancy. Therefore, it is the Board's conclusion that Rule 16 is not dispositive of this dispute.

The language of Rule 2 - CLASSIFICATION is of particular importance in this case. Paragraphs D and P as written and agreed upon by the parties are clear, unambiguous and definitive. Agreement rule language very similar to that contained in this Rule 2 has been the subject of previous interpretation by our Board. For example, in Third Division Award 3956, we read:

"Complaint is here made that assistant signalmen and assistant signal maintainers work with and under the direction of a foreman of maintainers. This is a violation of the rule. We do not doubt that a foreman of maintainers may give general directions to an assistant as to when and where he shall work, but the manner of doing the work must be under the direction of a signalman or signal maintainer under the plain meaning of the rule.

It is clearly the intent of the Agreement that assistants shall be trained by those actually performing work in the field, i.e., signalmen and signal maintainers."

And again, in Third Division Award 6263, we find the following:

"However, Rule 5 classifies an Assistant Signalman as: 'An employe in training for a position of signalman ... working under the direction of (but not at all times with) a signalman or signal maintainer' This Division has construed this rule to mean '... that an assistant signalman ... must be working under the direction of a signalman or signal maintainer to be classified as an assistant In other words, an assistant must get his training from a signalman or signal maintainer ... the manner of doing the work must be under the direction of a signalman or signal maintainer under the plain meaning of this rule.'"

And still again in Third Division Award 11173 the following conclusion was reached:

"There is no denial that neither on August 30 nor on September 11, 1956 was there a Signal Repairman on duty. While the Carrier, unquestionably, had the right to blank that position for the two days, there is also every reasonable assumption that the Assistant Signal Repairman remained on duty to do all of the signal repair work required on those days. Whether he did the work expertly and efficiently is immaterial. The Carrier saw fit not to assign a Signal Repairman to supervise his work as provided in Rule 6. The Supervision of the Leading Signal Tester was of a different nature. The latter had his own responsibilities and while he had authority to generally supervise the Claimant, he was not responsible for the signal repair work in the same manner as a Signal Repairman would have been had he worked those days with the Claimant.

It is precisely because the Scope Rule does not minutely define or set out work descriptions that we are obliged to find that Claimant did perform Signal Repairman's work on the mentioned dates. Rule 6 is sufficiently clear that an Assistant Signal Repairman works under the direction of a Signal Repairman. When he does not work under such direction he is performing Signal Repairman's work and is entitled to be paid the rate for that position."

When the logic of these Awards is matched with the Agreement language and fact situation which exists in this case, there can be only one conclusion. That is that on each of the dates here involved, the Claimant Assistant Signalman was not working with or under the direction of a Signalman. As was said in Award 11173, "... when he does not work under such direction he is performing Signal Repairman's work and is entitled to be paid the rate of that position." The Board so holds in this case.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant 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 19th day of January 1996.