

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31297
Docket No. SG-31303
95-3-93-3-232

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
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation:

Claim on behalf of D.J. Caldwell for payment of the difference between the Assistant Inspector's rate and the Foreman/Inspector's rate beginning June 10, 1991, and establishment of a seniority date in the Foreman/Inspector class, account Carrier violated the current Signalmen's Agreement, particularly Rule 4-G-2(a), when it failed to properly compensate the claimant for performing work accruing to the classification of Foreman/Inspector." Carrier's File No. SG-437. General Chairman's File No. RM2266-42- 392. BRS File Case No. 8885-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 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 operative facts of this dispute are clear. Carrier had a need for the performance of certain undisputed signal work. To perform this needed service, Carrier bulletined a three-man gang consisting of an Assistant Inspector and two Signalmen positions. This gang was bulletined with headquarters at Avon, Indiana, under the jurisdiction of the existing Inspector at Avon. Prior to the actual assignment of this three-man gang, the Organization insisted that the planned work should be performed "by signal 'gang' consisting of a Foreman and however many men necessary to do the work." The Organization indicated that if Carrier did not create a Foreman position for this new gang, they would claim the difference in rate for all work performed by the successful bidder of the Assistant Inspector position if he "works this position and assumes a Foremans (sic) responsibilities."

Following the awarding of the three-man gang, the Organization initiated a penalty claim on behalf of the Assistant Inspector alleging that he was assuming "the duties and responsibilities of a Foreman/Inspector in charge of a three-man construction gang ..." and therefore was entitled to be paid "the difference between Mr. Caldwell's rate and the Foreman/Inspector rate"

The operative Agreement rules involved in this dispute are as follows:

"CLASSIFICATIONS

INSPECTOR

An employee assigned to direct the work of employees and to inspect the facilities, equipment or apparatus installed, maintained or repaired by employees under this agreement, and to perform the C&S 27 Tests (See Appendix F).

FOREMAN

An employee assigned to direct and inspect the work of signal gang employees or signal shop employees assigned to him in a general railroad area, such as a yard or terminal.

ASSISTANT INSPECTOR

An employee assigned to assist in the performance of Inspector duties and to perform the work of employees assigned to him.

ASSISTANT FOREMAN

An employee assigned to assist in the performance of Foreman duties. The Assistant Foreman may perform the work of employees assigned to him when the number of such employees does not exceed seven (7)."

"4-G-2.(a) An employee, who during a tour of duty performs work for which more than one rate of pay is applicable, shall be paid for the entire tour of duty at the highest rate of pay applicable to any of the work performed. An employee who performs service temporarily in a lower rated position shall not have his rate reduced."

When the claim was initially filed, the Organization argued that:

"The Inspector at Avon refused to have anything to do with Mr. Caldwell or the two Maintainer/Signalmen assigned to him, as far as assuming responsibility for their work and guidance and directing their efforts.

Assistant Division Engineer M.A. Drudy even had to order the Avon Inspector to call in their time as the Inspector would refuse to record it when Mr. Caldwell turned it in."

The Organization's subsequent position consisted primarily of two written statements, one from the regular assigned Inspector at Avon under whose jurisdiction the Assistant Inspector worked and one from the Claimant Assistant Inspector which essentially gave substance to the fact that the Inspector had refused to accept his assigned responsibilities.

The Carrier's position throughout the handling of the dispute centered around the language as found in the respective Classification definitions quoted supra and that the absence of day-to-day oversight by the Inspector did not negate his responsibility for the work of the Assistant Inspector and his crew who were assigned to work under the Inspector's jurisdiction.

This Board has repeatedly held that, absent some agreement provision to the contrary, Carrier has the sole prerogative of determining under what circumstances and to what extent supervision is required. For example, in Third Division Award 7059 we read:

"The need of supervision, in the absence of agreement provisions to the contrary, is a matter within the prerogative of management."

And again in Third Division Award 13031, we find:

"The question of how much supervision is required over various operations is obviously one of managerial discretion, to be decided by the Carrier."

In any supervisory situation, there are often situations in which the responsible supervisor does not direct the day-to-day operations of employees under his jurisdiction. The fact that, in this case, the responsible Inspector refused to accept his responsibility in this regard does not negate Carrier's right to assign an Assistant Inspector and Signalmen/Maintainers to perform the work here in question.

In this dispute, the applicable agreed upon Classification rule clearly recognizes that an Assistant Inspector will both assist in the performance of Inspector duties as well as perform the work of the employees assigned to him. Therefore, the language of Third Division Award 8526 as relied upon by the Organization actually supports the position of the Carrier in that the "definite duties" of the Assistant Inspector are clearly set forth in the negotiated agreement and, in this case, Carrier has not assigned those duties to lower-rated positions.

The Organization has not met the burden of proving by convincing agreement provisions that the action as taken by Carrier in this instance required the assignment of an Inspector or Foreman. Rather, it is the conclusion of the Board on the basis of this fact situation that the assignment of an Assistant Inspector and two Mechanics under the jurisdiction of the existing Inspector met all of the criteria as set forth in Classification descriptions agreed upon by the parties. There is no proof that Claimant performed during his tour of duty any work for which more than one rate of pay is applicable. He functioned as an Assistant Inspector. Therefore, the claim as presented is denied.

Form 1
Page 5

Award No. 31297
Docket No. SG-31303
95-3-93-3-232

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of January 1996.