

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31329
Docket No. SG-31310
96-3-93-3-322

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 (CONRAIL):

Claim on behalf of T.J. Wertz, V.A. Reber, M.J. Gusley, Jr., and W.E. Bruner:

- A. Carrier violated the current Signalmen's Agreement, particularly Rules 4-A-1(a), (e), 5-A-1 and Appendix M, when it failed to obtain the agreement of the General Chairman and assigned improper work days of Monday through Thursday with work hours of 7:00 a.m. to 5:30 p.m. to the positions awarded to the Claimants on April 8, 1992.
- B. Carrier should now be required to abolish the positions awarded to the Claimants and rebulletin the positions in accordance with the provisions of the Agreement regarding work days and starting times. Carrier should also be required to compensate the Claimants eight hours at their respective straight time rates for each week worked on the positions and one hour at their straight time rates for each day worked on the positions, beginning April 8, 1992. Carrier's File No. SG-473. General Chairman's File No. RM2320-105-782. BRS File Case No. 8962-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 fact situation in this case is clear and not really in dispute. Carrier bulletined two Assistant Inspector positions and two Maintainer positions. All four positions were bulletined to be subject to work a four day workweek. No exception was voiced to the bulletin by the Organization at the time the bulletin was posted. Effective April 8, 1992, the Claimants named in this dispute were awarded the bulletined positions on the basis of their respective seniority and on the basis of the applications they had submitted for the positions. The Claimants were used on these positions working in pairs with an Assistant Inspector and a Maintainer working together in the performance of their assigned tasks. They were used to work four ten-hour days and they were provided meal and lodging expenses as appropriate to the needs of the assignments. The Claimants worked in this manner without complaint from either the Organization or the individual Claimants from April 8, 1992, until May 25, 1992, when the claim as outlined in the Statement of Claim supra was initiated by the Organization.

The Organization alleged a violation by Carrier of Agreement rules 4-A-1(a) and (e), 5-A-1 and Appendix "M." The Organization's argument both on the property and before the Board centered primarily on Appendix "M" and specifically on the provisions in Appendix "M" which requires that under certain circumstances the concurrence of the General Chairman must be given before employees are assigned to work a four day workweek. The Organization argued that in this instance the Claimants were not members of a "signal gang" and therefore the General Chairman's concurrence was required before the positions could be worked on four ten-hour shifts. The Organization cited with favor the decision rendered by Award 3 of Public Law Board No. 4603.

The Carrier's position is that the Assistant Inspector and the Maintainer working together at the same location on the same job constituted a "signal gang" and that inasmuch as they were a "signal gang" there was no requirement in Appendix "M" to seek or obtain the concurrence of the General Chairman to work such gangs on a four day workweek schedule.

Carrier insisted that Appendix "M" made no reference to the type of gang which is contemplated within its provisions and that the Organization has not proven that the term "signal gang" applies only to construction projects. Carrier further insisted that meals and lodging were, in fact, provided to the Claimants in this case and that this fact was not challenged or contradicted by the Organization. Carrier argued that this fact of providing meals and lodging standing alone negated any requirement to seek or obtain the General Chairman's concurrence. Carrier cited with favor on this point the same Award 3 of Public Law Board No. 4603, as mentioned earlier.

Appendix "M" is a negotiated Agreement made by the parties on October 17, 1978, for the specific purpose of "providing for the establishment of a work week consisting of four ten-hour days." Paragraphs No. 1 and No. 5 of this Appendix "M" read as follows:

- "1. Employees holding permanent positions in a Signal gang may be required to work a four (4) day workweek consisting of ten (10) hours per day, Monday through Thursday, when their job assignment does not allow such employees to return to their permanent headquarters for five (5) or more working days that are consecutive. Other positions may be assigned to such a four (4) day workweek with the concurrence of the General Chairman.

* * * * *

5. When signal gangs are assigned to work on a four (4) ten (10) hour day per week basis, necessary meals and lodging will be furnished by and arranged for at company expense. The Carrier-provided motel or hotel accommodations, and meal facilities, shall consist of clean, healthful, sanitary facilities with not more than two (2) men occupying one (1) room with two (2) beds. In the event a question arises as to the quality of the accommodations provided, the General Chairman will handle the matter directly with the Chief Signal Engineer for necessary correction."

The Board has read with interest the Award rendered by Public Law Board No. 4603 which dealt with certain aspects of this subject. Unlike the situation which exists in this case, there was no argument in that Case No. 3 by either party relative to the Claimant's therein being a "signal gang." Additionally, unlike the fact situation in this case, there was agreement between the parties that Carrier did not in that case pay the Claimant's lodging and meal expenses. Aside from these two basic fact differences, the Public Law Board significantly held as follows:

"One of these terms * must exist in order for the Carrier to legitimately change the work week of employees."

The Public Law Board No. 4603 held that inasmuch as neither of these referenced terms had been met, the Carrier was therefore in violation of Appendix "M."

The Board finds no fault with the award of Public Law Board No. 4603. It doesn't, however, give any assistance in the disposition of this case. Here meal and lodging expenses were in fact allowed. Here there is a legitimate contention that the two two-man work forces were in fact "signal gangs" as that term is spelled out in Appendix "M." Here it is clear that Appendix "M," by its very language, does not require prior General Chairman's concurrence to have a "signal gang" work a four day workweek.

The Organization candidly acknowledges that "... the Agreement does not specifically define 'signal gang'...." Yet they argue, without any probative supporting evidence, that an Assistant Inspector and a Maintainer working together does not constitute a 'signal gang' and that Carrier's interpretation of the term signal gang in this case distorts the accepted meaning of that term. They insisted that the 'ordinary consist' of a signal gang required a Foreman.

However, on this same property with this same Organization, this Board held in Third Division Award 27132 as follows:

"On June 2, 1985, the Organization appealed noting that Rule 5-A-2 does not define the term 'Gang' but asserted:

'historically all men working at the same job at a given location have been described as a Gang without the requisition of all of the men working for the same foreman.'

* The "terms" referenced here were that the General Chairman's approval was required to change other than signal gangs or that Carrier was required to provide lodging and meal expenses.

Rule 5-A-2 does not define the term 'gang' but we believe Carrier's limiting of the term to groups of employees supervised by the same foreman is too restrictive and unwarranted. Here employees of a class (Signal Employees) were all assigned to the same task (rebuilding retarders) at the same location at the same time. We hold the group constituted a 'gang' within the meaning of Rule 5-A-2 and therefore those 'with the greatest seniority in the class' were entitled to work the overtime."

With no evidence to the contrary to be found in this case, the Board holds that the two employees working at the same job at a given location constituted a "signal gang" as that term is used in Appendix "M" and as the term has been interpreted by Award No. 27132.

Therefore, it is the conclusion of the Board in this instance that prior concurrence of the General Chairman was not required to have the two two-man signal gangs here in question work a four day workweek. This permission was granted by the agreed upon language of Appendix "M." Both paragraphs No. 1 and No. 5 of said Appendix "M" were complied with by Carrier. The Organization's contention to the contrary is denied.

AWARD

Claim denied.

ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of January 1996.