

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 39006
Docket No. SG-38613
08-3-NRAB-00003-040624
(04-3-624)

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad that:

Claim on behalf of C. S. Turk, for the difference in pay between the Lead Signalman's rate of \$20.16 and Signal Foreman's rate of \$23.11 for each hour worked after August 8, 2003, with all adjustments made for rate of pay for overtime hours and any general wage adjustment; and that Carrier be required to bulletin a Signal Foreman's position on Signal Gang 5119, account Carrier violated the current Signalman's Agreement, particularly the Scope, and Rules 1, 26 and 80, when on August 8, 2003, it assigned multiple employees to Gang 5119 who now work together, and the Claimant, as the senior employee, should be paid at the Signal Foreman's rate instead of at the Lead Signalman's rate. This is a continuing claim until the Claimant is properly compensated. Carrier's File No. 1379763. General Chairman's File No. N 1 26 382. BRS Case No. 13039-UP.”

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 were given due notice of hearing thereon.

The Organization filed the instant claim on behalf of the Claimant, who was assigned to the position of Leading Signalman on Zone Gang 5119. The claim alleges that the Carrier violated the Agreement when it failed to compensate the Claimant at the proper Signal Foreman's rate of pay.

The Organization initially contends that the Carrier violated the Agreement when it failed to assign the Claimant to a Foreman's position when it assigned multiple employees to Gang 5119. The Organization asserts that as the senior employee on Gang 5119, the Claimant was compensated at the Lead Signalman's rate of pay instead of the Signal Foreman's rate of pay.

The Organization argues that this case has to do with the non-assignment of a Foreman position on Gang 5119, which resulted in Claimant's loss of pay while he supervised the members of Gang 5119. The Organization points out that the Claimant was compensated for performing Foreman's work at the Lead Signalman's rate of pay.

Addressing the Carrier's reliance on Note 2 of the Scope Rule, the Organization maintains that this provision was intended to cover situations in which a gang is separated into smaller work groups that continue to share the same Foreman. In this type of situation, each subgroup is supervised by a Leading Signalman, under the direction of the Foreman.

The Organization insists that the Carrier refused to comply with Agreement Rule 1, paragraph N, which requires that a Leading Signalman will be under the supervision of a Signal Gang Foreman and have common headquarters with the

Foreman. The Organization emphasizes that numerous Awards have affirmed the principle that Agreement language must be applied as written. The Organization contends that the Agreement language at issue is clear and concise, and the Carrier had a contractual obligation to apply the Agreement as written. The Organization contends that the Claimant was not under the direction of a Foreman, nor did he have a common headquarters with a Foreman while assigned by the Carrier to the Lead Signalman position on Gang 5119.

The Organization then argues that there is no merit to the Carrier's reliance on a prior Award holding that the applicable Rule allows the Carrier to assign a Lead Signalman to supervise without assigning a Foreman. The Organization asserts that this Award dates to 1990, while the present Agreement language took effect in 2000. The Organization insists that during a meeting in 2000, the parties reached an understanding directly relating to the type of violation at issue here. The Organization contends that the Carrier issued instructions in connection with this meeting that clearly established the Carrier's intent and understanding that all gangs would have a Foreman. In accordance with this understanding, the Carrier reclassified Leading Signalman positions to Foreman positions after the current Agreement took effect on February 1, 2000.

The Organization insists that the parties' understanding during negotiations over the current Agreement, along with the fact that the Carrier acquiesced in the intent of Rule 1(N) after the current Agreement took effect, was that a Leading Signalman will be under the supervision of a Signal Foreman with common headquarters. The Organization asserts that these actions clearly void the outdated decision upon which the Carrier relies. Moreover, the Carrier should not be allowed to reinterpret the clear and previously agreed upon intent of Rule 1(N) and Note 2 of the Scope Rule based on the argument that its representative was not aware of the old Award. The Organization argues that the Carrier is obligated to enforce the clear intent of the Rules reached during the parties' negotiations. The Organization asserts that to do otherwise would compromise the integrity of the negotiated Agreement.

As for the suggestion that the Claimant was not qualified to be a Foreman, the Organization points out that the Claimant has been a Class 1 employee since

May 1996. Moreover, the Claimant successfully completed all available training and passed all required Rule examinations. The Organization emphasizes that the Carrier did not provide any factual proof that the Claimant was not qualified to be a Foreman, despite the fact that it had ample opportunity to do so.

The Organization acknowledges that the Carrier has the prerogative to determine an employee's qualifications to perform the duties of particular positions, but the Board repeatedly has emphasized these determinations must be based on a foundation of fact, not mere opinion or surmise. The Claimant established that he was qualified as a Leading Signaller, and the Carrier awarded him that position on Gang 5119. The Carrier has not provided any evidence of poor performance or other factors that would make the Claimant ineligible to fill the Signal Foreman position. The Organization contends that the Claimant clearly performed the regular duties of a Foreman, and he should now be compensated at the Foreman's rate of pay.

The Organization asserts that the Board consistently has held that arbitrary actions of this nature violate the rights of the affected employee. Because the Carrier failed to show that the Claimant was not qualified to fill the Foreman's position, it can only be concluded that the Carrier's decision was arbitrary and capricious.

The Carrier initially contends that the issue here already has been decided in its favor. The Carrier asserts that it prevailed in the same case brought before Public Law Board No. 4716, Award 24, and the principle of stare decisis should require the Board to reach the same conclusion in the instant proceeding. The Carrier asserts that this earlier case involved the same Rules, and the Organization made the same arguments as it has in the instant proceeding. Except for the name of the claimant and the number of the Rule under the former Agreement, this prior case would be identical to the instant matter. The Carrier argues that in this earlier case, the Board concluded that the provision now known as Scope Rule Note 2 allowed a number of Signallers and Assistants to work without the direction of a Signal Foreman, which permitted the Carrier to establish gangs without Foremen, just as occurred here. The Carrier insists that there is no reason to reach a different conclusion now.

The Carrier argues that there has been no showing that the prior Award is in any way erroneous, let alone to the extreme standard required before an Award will not be followed. The Carrier points out that since this earlier case was decided, the exact same issue has come before the Board on several occasions, but the Organization has withdrawn these cases, knowing that Public Law Board No. 4617, Award 24 was on point and stare decisis should apply.

As for the allegation of a violation of Rule 80 of the Agreement, the Carrier insists that the Claimant did not suffer a loss of earnings by being assigned to a Leading Signaller position due to the actions of the Carrier. The Carrier argues, in addition, that because no violation of Rule 1 has been shown, there cannot be a violation of Rule 80, which is a catch-all provision that is not relevant unless there has been a violation of other Agreement provisions.

The Carrier contends that the Organization has not refuted even one of the elements of the Carrier's position. It therefore argues that the material facts set forth by it must be taken as true. The Carrier emphasizes that nothing has occurred to eliminate Scope Rule Note 2 or the prior Award that addressed its language. There is no support for the Organization's position that the Agreement and its long-standing interpretations somehow have been altered. The Carrier argues that the relevant Rules are exactly the same as they were when Public Law Board No. 4716, Award 24 was rendered, and these Rules have the same meaning and effect attributed to them in that Award. The Carrier asserts that this Award continues to be valid precedent, and it should be followed here.

The Board reviewed the record in this case, and we find that the Organization failed to meet its burden of proof that the Carrier violated the Agreement when it did not pay the Claimant, who was the senior employee, at the Signal Foreman's rate instead of at the Lead Signaller's rate. The record reveals that this same type of case was brought before Public Law Board No. 4716, and the Board ruled as follows:

"The language of Rule 2(o) in which the position of Leading Signaller is defined would, standing alone, lend strong support to the Brotherhood's position. Rule 2(o) does not stand alone,

however. It is modified clearly and unambiguously by the language in Rule 55, which specifically provides that a maximum of two Signalmen, with or without an assisting signal technician or assistant signalman, may perform work not under the supervision or direction of a Signal Foreman. Further, Rule 55 provides that the employee designated to direct such a work group shall be compensated at the Leading Signalman rate. If Rule 55 is to have any meaning at all, it must be read as a specific exception to the more general provision of Rule 2(o). Thus Carrier was not in violation of the Agreement when it compensated [the Claimant] as a Leading Signalman.”

The Board cannot find anything improper or wrong with Award 24 of Public Law Board No. 4716. It is directly on point. Consequently, to follow the doctrine of stare decisis, we must deny the claim because it has already been decided.

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 27th day of March 2008.