Award No. 4714
Docket No. SG-4448

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John M. Carmody, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: (a) That Signal Maintainer Charles W. Nolan, Hoopeston, Illinois, who was used by instruction of the Carrier to pilot a New York, Chicago and St. Louis Railroad locomotive over Chicago and Eastern Illinois Railroad tracks at Hoopeston, Illinois, which class of service is covered by agreement between the Chicago and Eastern Illinois Railroad and the Brotherhood of Railroad Trainmen, shall be paid for such service the same as if a conductor has been used.

(b) That Signal Maintainer Nolan shall, under the application of the Trainmen's agreement, be paid for one hundred (100) miles at Conductor's rate for piloting a New York, Chicago & St. Louis locomotive at Hoopeston on May 8, 1947, and for each subsequent time thereto that he was used for pilot service.

EMPLOYES' STATEMENT OF FACTS: On May 8, 1947, Signal Maintainer Charles W. Nolan was used for the purpose of piloting a New York, Chicago and St. Louis Railroad locomotive over a portion of the Chicago and Eastern Illinois Railroad's tracks at Hoopeston, Illinois.

For this pilot service the claimant was paid in accordance with overtime provisions of the agreement between the Chicago and Eastern Illinois Railroad Company and the Brotherhood of Railroad Signalmen of America.

Under the provisions of the Trainmen's agreement, when a Conductor is used for this service he is to be paid not less than a minimum day at through freight rate for a Conductor.

There is an agreement between the parties to this dispute bearing effective date of May 1, 1945, and is by reference made a part of the record covering this claim.

CARRIER'S STATEMENT OF FACTS: On May 8, 1947, claimant was called outside the hours of his regular assignment to pilot NKP engine around the C&EI wye at Hoopeston, Illinois.

Claimant was regularly assigned as signal maintainer, with headquarters at Hoopeston, Illinois. Carrier was without notice that this engine was to be turned, and it was necessary to call an employe who carried a switch key so that the respective switches might be unlocked.

This movement did not require in excess of thirty minutes, and claimant was compensated therefor at time and one-half the signal maintainer's

DAMENTAL THAT ONE MUST RELY UPON HIS OWN AGREEMENT IN SUPPORT OF A CLAIM BASED ON A CONTRACT VIOLATION. ONE HAS NO RIGHTS UNDER CONTRACTS TO WHICH HE IS NOT A PARTY EXCEPT AS THEY MAY BECOME SO BY THE PROVISIONS OF HIS OWN AGREEMENT." (Emphasis supplied).

Reading further, we find the above basic concept restated in the following language:

"The right of this claimant to an award must be established by his own agreement. If he is unable to do that, he has no claim."

With the precepts above stated we have no quarrel. It is, in fact, the precise point upon which the Carrier bases its position that in the instant case petitioner must rely upon his own agreement to find the measure to be applied against whatever rate is proper, and is barred from relying upon the rules of the Trainmen's agreement therefor. The Carrier submits that the decision in Award 3489, in that it applies to claimant the Guarantee Rules for trainmen, is founded on error and inconsistent with the basic principles laid down in Opinion of Board. The error lies in a failure to recognize the basic distinction between rules providing RATES OF PAY and those governing WORKING CONDITIONS, and we respectfully submit that the decision should be reversed.

APPLICATION OF TRAINMEN'S AGREEMENT: In petitioner's statement of claim, it is requested "That Signal Maintainer Nolan shall, UNDER THE APPLICATION OF THE TRAINMEN'S AGREEMENT, be paid for one hundred (100) miles at Conductor's rate ***." (Emphasis supplied). In the face of petitioner's positive statement it cannot be denied that claim involves "application of the Trainmen's agreement."

As heretofore stated, it is Carrier's position that petitioner's interpretation of the Trainmen's agreement is not correct, and we do not agree that "under the application of the Trainmen's agreement," claimant is entitled to one hundred (100) miles at Conductor's rate for piloting an N.K.P. locomotive at Hoopeston on May 8, 1947.

It is further Carrier's position that any "application of the Trainmen's agreement," is reserved under Section 3, First, (h) of the Railway Labor Act, for adjudication by the First Division, and that this Division is without jurisdiction to consider the merits thereof.

The Third Division, without question, has the authority to render a decision determining proper application of the rules in the Signalmen's agreement. If it decides that claimant's compensation is to be computed in accord with the guarantee rules in effect for trainmen, then the proper application of those rules is a question that must be submitted to the First Division for determination.

It is the Carrier's position that under Rule 32 of the Signalmen's agreement claimant is subject only to the hourly rate of pay for conductor, that he is not subject to the guarantee provisions of the Trainmen's agreement, but that he must rely upon the guarantee established under Rule 22 of the Signalmen's agreement for the purpose of calculating compensation due him. We submit, therefore, that this claim is without merit and respectfully request that same be denied.

(Exhibits not reproduced).

OPINION OF THE BOARD: We are met at the threshold here with a question of jurisdiction. Several awards of the First Division have been cited in which claims were denied because, although the employes were properly before that Division through their organizations, the work in question was

covered by agreements that came within the jurisdiction of another Division of the Board.

We make no comment on those findings. It is our own view that when the Congress passed the Railway Labor Act it was not intended that employes or their organizations should fall between two stools in their endeavor to secure "prompt disposition of disputes between carriers and their employes." In the instant case we think the question of jurisdiction has been disposed of in Award No. 3489. We do not agree with the Carrier's contention that that Award is in error. See Awards 2703 and 3117.

The facts in this case are simple and not in dispute. The controversy arises out of the method of compensation. The Carrier required the services of a pilot to turn an engine at the wye in Hoopeston, Illinois. Normally this is conductor's work and provided for in the Trainmen's Agreement. Signalman Nolan was called at 1:10 A.M. to perform the piloting operation around the wye. He was paid the minimum allowance provided for in Rule 22 of the Signalmen's Agreement at time and one-half rate.

In a letter dated January 6, 1948, from Manager of Personnel Morgan to General Chairman Newman of the Brotherhood, we find this statement:

> "Since the conductor's rate per hour was 2 cents higher than that for signalmen, we agree that Mr. Nolan should have been paid a call at the hourly rate for the conductor and we are agreeable to making adjustment, accordingly. Mr. Nolan is not subject to the rules in the Trainmen's Agreement, and we do not agree that he is entitled to a minimum of 8 hours at conductor's rate of pay thereunder."

Here, in simple language, we have the essence of the Carrier's contention.

It is not contended by the Organization or the Claimant that either had any part in negotiating the agreement covering the piloting operation or the terms of compensation. It is conceded that is a matter for the Carrier and its employes who regularly or normally perform that operation, or their representatives, to agree upon. Claimant is before us on his own Agreement, effective May 1, 1945. Rule 32 of that Agreement contemplates the probability that he may be called upon "to fill the place of another employe receiving a higher rate of pay." He does not seek a penalty. He only asks that, having been directed to perform that service when the Carrier wanted it performed, he be paid what the Carrier would have been required to pay a conductor if he had performed the same service. This is not unreasonable.

With respect to the applicable rules, the Carrier already has offered, in its letter of January 6, 1948, referred to above, to pay the conductor's hourly rate. In its submission the Carrier says: "It is conceded that Claimant is entitled to the conductor's rate of pay," but not "to the guarantee provisions of the Trainmen's Agreement." There is no showing that when Nolan was called at 1:10 A.M. the purpose was to circumvent the Trainmen's Agreement or to get the work done cheaper than if a conductor had done it. It was an emergency; Nolan met it. We conclude he is entitled to the full compensation a conductor would have received for that operation.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Claimant is entitled to the full compensation provided for in the Agreement under which the service was performed.

AWARD

Claim (a) sustained; claim (b) sustained subject to deduction of amounts already paid Claimant on any other basis.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. J. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 13th day of February, 1950.