

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee.

PARTIES TO DISPUTE:

**THE BROTHERHOOD OF RAILROAD SIGNALMEN
OF AMERICA**

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of First Trick Signal Maintainer L. F. Harmon at Eastbound Hump Car Retarder Yard, Cumberland for Leading Signal Maintainer's rate of pay for following dates: September 24, 26, 27, 1947 and October 1, 8, 10, 11 and 15, 1947.

EMPLOYEES' STATEMENT OF FACTS: Signal Maintainer L. F. Harmon who was regularly assigned as the first shift maintainer at Cumberland, Md., East Bound Hump, directed the work performed by Maintainer Logsdon, on the days specified in the claim, while making certain periodic tests and adjustments on the car retarder system. Maintainer Logsdon when not relieving the regular maintainers at Cumberland, East Bound Hump, is assigned on other maintenance districts in the Cumberland yard. The tests and adjustments involved required the services of two qualified employees. Maintainer Harmon submitted daily time slips for the days involved in the claim at the leading maintainer's rate of pay, these claims were subsequently denied.

CARRIER'S STATEMENT OF FACTS: L. F. Harmon was regularly assigned as first trick signal maintainer at the east bound hump car retarder yard in the Cumberland Yard of this Carrier's Cumberland Division. On September 24, 26 and 27, 1947, and on October 1, 8, 10, 11 and 15, 1947, L. F. Harmon and H. P. Logsdon, relief signal maintainer, were required to make certain tests and adjustments on specified portions of the car retarder apparatus located in the Cumberland Yard. Thereafter, Signal Maintainer L. F. Harmon submitted claim that he was properly entitled to leading maintainer's rate of pay on these dates.

POSITION OF EMPLOYEES: It is the position of the Brotherhood that Signal Maintainer Harmon was in fact, and within the meaning and intent of Rule 2 of the current Signalmen's Agreement, a leading maintainer on the dates specified in the claim.

Claimant, L. F. Harmon was the regularly assigned first shift maintainer at the Eastbound hump, car retarders, Cumberland, Md. Periodically certain tests and adjustments are made of the apparatus and functions comprising a car retarder system. Acting upon this knowledge, plus the fact that such work would require the use of two men, maintainer Harmon

In this Division's Award No. 3992 it has been stated in part:

"* * * the Agreement was not violated."

Finally, in this Division's Award No. 4184 it was held in part that:

"* * * the Carrier did not violate the Agreement."

The wage claims in each of the Awards cited above were categorically denied by this Division.

The Carrier desires to emphasize the fact that Rule 2 of Article 1 of the applicable agreement has application only upon the happening of a fixed factual situation. The instant case does not demonstrate that any such happening ever occurred at any time on the dates specified in the instant wage claim. Certainly there is nothing whatever in evidence in this case to demonstrate that this work on the retarder apparatus was performed by any employes other than the claimant in this case and signal Maintainer H. P. Logsdon. Indeed, the Carrier has conclusively demonstrated that the claimant did not at any time "* * * direct * * *" the actions of the other signal maintainer within the meaning or application of the working rule. Actually what the employes seek here is an entirely new rule, one that is not presently to be found in the working contract.

On this basis, and in view of all that has been said hereinabove, the Carrier respectfully requests and petitions this Division to find this protest and the wage claims emergent therefrom as being totally without merit and to deny them accordingly.

OPINION OF BOARD: Rule 2 of the effective Agreement provides:

"An employe qualified and assigned to work with and direct the work performed by signal maintainers, assistant signal maintainers and/or their helpers, will be classified as a leading maintainer."

The claim is predicated upon the circumstance that on the dates in question the Claimant, a regularly assigned first trick signal maintainer, and a regularly assigned relief signal maintainer, were assigned to make periodic tests and adjustments on the Carrier's car retarder system, without the designation of either of them as the leading maintainer. The Employes' contention is disclosed by the following quotation from their statement of position in the record: "... it would be practically impossible if not unreasonable to assume that two individuals could, under such circumstances, perform work to any advantage without one assuming leadership and taking charge of the work."

Rule 2 quoted above, is not self-executing, however. It requires that the employe be "assigned to work with and direct the work," to render it applicable and effective. To be "assigned" to a position implies that the employe was appointed or designated under such circumstances as he was under a contractual obligation to comply. Award No. 2670. That there was no such assignment appears to be conceded.

Whether the work could be efficiently and effectively performed without the designation of one of the employes as the leading maintainer is beside the question, since the Organization has no managerial responsibilities in that regard.

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 Employes involved in this dispute are respectively carrier and employes 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 the Carrier did not violate the Agreement.

AWARD

Claim denied

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST. A. I. Tummon
Acting Secretary

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