

Award No. 6096
Docket No. SG-5847

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Paul G. Jasper, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE PENNSYLVANIA RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Pennsylvania Railroad that:

(a) Assistant Foremen, 2nd and 3rd shifts, Pennsylvania Station, New York, are entitled to a Foreman's rate of wages.

(b) Assistant Foremen, 2nd and 3rd shifts, Pennsylvania Station, New York, be paid the Foreman's rate of wages as of January 1, 1949, and subsequent dates.

EMPLOYEE'S STATEMENT OF FACTS: At Pennsylvania Station, New York, the following positions of Foremen and Assistant Foremen exist:

Location	Position	Tour of Duty
Penn. Station, New York	Foreman T. & S.	1st trick
Penn. Station, New York	Asst. Foreman T. & S.	1st trick
Penn. Station, New York	Foreman T. & S.	1st trick
Penn. Station, New York	Asst. Foreman T. & S.	2nd trick
Penn. Station, New York	Asst. Foreman T. & S.	3rd trick

When these positions were in force, on the effective date of the agreement, most all tower and tunnel positions in this area were covered by Maintainers, on all shifts. Since then the following positions have been abolished on the 2nd and 3rd shifts:

Maintainer	—	Bay Tower	—	2nd Shift
Maintainer	—	"JH" Tower	—	2nd Shift
Maintainer	—	"JH" Tower	—	3rd Shift
Maintainer	—	"C" Tower	—	2nd Shift
Maintainer	—	Hudson Tower	—	3rd Shift
Maintainer	—	Portals Tower	—	2nd & 3rd Shifts
Maintainer	—	East River Tunnels	—	3rd Shift
Maintainer	—	North River Tunnels	—	2nd & 3rd Shifts

CONCLUSION

The Carrier has shown that the matter in dispute is not one for adjudication by your Honorable Board; that the Carrier is not required by the applicable Agreement to reclassify the positions and rates of pay in question; and that the unnamed Claimants are not entitled to the alleged loss of earnings which is claimed.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the employees in this matter.

All data contained herein have been presented to the employees involved or to their duly authorized representative.

(Exhibit not reproduced).

OPINION OF BOARD: Claimants are assigned positions as assistant foreman telegraph and signals on the second and third tricks at the carrier's station in New York.

Claimants contend that they are entitled to pay at a foreman's rate, rather than that of an assistant foreman, as of January 1, 1949.

Since June 1, 1943, and prior thereto, two foremen, one of construction and one of maintenance, with an assistant foreman, were assigned to the first trick. An assistant foreman maintenance was assigned to the second trick, and an assistant foreman maintenance-construction was assigned to the third trick. The assistant foremen on the second and third tricks reported to and received their orders from the foremen.

The claimants contend that they were doing the work of foremen and should receive foremen's pay, and that Article 1, Section 1, of the Agreement was violated. The last-cited Article provides in part:

"Foreman: An employe whose primary duties are to supervise a gang or group of leading maintainers, leading signalmen, signal maintainers, telegraph and signal maintainers, telegraph and telephone maintainers, or signalmen, with or without assistant signalmen or helpers, including inspection of the work performed by such employes.

"Assistant Foreman: An employe whose primary duties are to assist in the performance of foremen duties."

Attention is called to Article 5, Section 9 (a), effective June 1, 1950. We need not consider this section, since it is not applicable to the claim in dispute. This dispute arose prior to its effective date of this section.

The positions involved herein were classified June 1, 1943, and the same classification was again given the positions when the Agreement was revised September 1, 1949.

It is well settled that this Board cannot make rules. Its function is to interpret the Agreement as written, and apply the Agreement to the facts of a particular case.

It is necessary for the claimants to make out and prove their case. In the claim at bar it was necessary that the claimants prove that they had been performing the duties of a foreman. This burden was upon them.

From the record, they have failed in their burden of proof. There is no showing that the duties of assistant foreman on the second and third tricks, as performed on June 1, 1943, are any different than those performed on

the date this claim was filed. The mere fact that there may be less employes under the foreman and assistant foreman does not mean in and of itself that their work was increased. Nor does the fact that there was no foreman assigned to their tricks mean that they are performing the work of a foreman, because, under the Agreement, they could be assisting a foreman who is responsible for the work of all three tricks even though the foreman was assigned to one trick. The record does reveal that the assistant foremen reported to and received their instructions from the foreman assigned to cover the territory. And we must assume, until the contrary is shown, that the foremen are performing the duties as called for under Article 1, Section 1.

The claimants have not shown that they are performing the duties of a foreman. They have shown no change of working condition from that existing at the time the Agreement was originally entered into and when it was revised.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of February, 1953.