Award No. 10012
Docket No. SG-9403

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chicago Rock Island and Pacific Railroad Company in behalf of:

Signal Maintainer M. W. Kiser for the difference between his rate of pay of $2.166 per hour and that of the monthly rate of a Signal Testman which is $484.07 per month for the following dates: December 8, 9, 13, 15, 16, 27, 28 and 29, 1955, and all future dates he is required to do Signal Testman's work.

BROTHERHOOD'S STATEMENT OF FACTS: Since the amendment of the current agreement which added Rule 1., Signal Testman Classification, all inspections and tests of signal relays, to meet the requirements of the Interstate Commerce Commission with respect to Inspections and Tests—All Systems, as required by paragraphs 104, 108, and 112, Rules, Standards and Instructions of the Bureau of Safety, I.C.C., have been made by the Signal Testman.

Under date of December 15, 1955, Assistant Supervisor of Communications and Signals F. W. Laverty wrote the claimant, as follows:

> "Marlow territory is very much in the arrears on the S D 4 reports, will you try to get these started up to date. Also the Oct. S D 3 report has not been received."

The Marlow territory as referred to by Assistant Supervisor Laverty is the assigned territory of the claimant with headquarters at Marlow, Oklahoma. The SD-4 reports stated by the Carrier to be in arrears is a form used by the Carrier for Electric Lock and Relay Test Record-I.C.C. Rules 105, 106, All Systems Each 2 Years.

The letter above quoted instructed the claimant to try and get the SD-4 reports up-to-date on his assigned territory, which work had heretofore been recognized as Signal Testman's work and had heretofore been performed by a Signal Testman. As pointed out above, the SD-4 form is a form used by this Carrier's Testmen when making inspections and tests to conform with the requirements of the Interstate Commerce Commission's Rules, Standards and Instructions of the Bureau of Safety as required in paragraph 112 under Inspections and Tests—All Systems, which reads as follows:

Signal Maintainers have performed the work complained of in the instant case for many years.

It cannot be denied that the testing performed is signal work, coming under the scope of agreement. Since the definition of a signal maintainer is shown in the agreement as "an employe assigned to perform work generally recognized as signal work", it should be properly assignable to the maintainer, especially in view of Note in Rule 1 quoted above.

A Signal Maintainer's duties are to perform work generally recognized as signal work. Proper maintenance automatically calls for both inspection and testing on occasion, in connection with their duties. Inspection and testing are within their duties.

For the above reasons, we respectfully petition the Board to deny the claim in this case.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representative.

OPINION OF BOARD: The gist of this claim is that a Signal Maintainer was required to perform work of a Signal Testman — consisting of certain tests and inspections required by the I.C.C. — on eight days in December 1955 and therefore is entitled to the Testman's rate of pay for those days under Rule 25, the Preservation of Rates provision of the Agreement. Petitioner contends that while Signal Maintainers may be called upon to perform at their regular compensation the type of testing and inspecting that guards against functional failure or locates and corrects signal troubles, they must be paid at the Testman's rate when directed to make tests and inspections required by the I.C.C. It cites Awards 1498 and 4828 to show that this Board has recognized the distinction between these two categories of signal tests and inspections.

The difficulty with Petitioner's position is that it is inadequately supported by the Agreement, record and cited awards. Rule 5 classifies Signal Maintenance as employes "assigned to perform work generally recognized as signal work as outlined in this agreement." The Scope Rule and other provisions of the Agreement are exceedingly general in speaking of signal work and make no distinction between the kinds of tests and inspections that are to be performed by Signal Maintainers and Signal Testmen. The latter are classified by Rule 1 as employes who are "regularly assigned to and whose principal duties are the inspection and testing of signal appliances, apparatus, circuits, and appurtenances, but who may perform any Signal Department work."

The Note to Rule 1, in discussing that provision specifically states that "neither is it, to be interpreted as restricting testing and inspection by any other qualified signal department employe as a part of his regular duties and at his regular rate." This language is clear and definite and is not limited by exceptions or modifications. It affords us little latitude in view of the well established restrictions on our authority when considering plain contract language.

While the importance of the Agreement's terms with respect to the instant question might be overbalanced by an appropriate combination of factors, the record in the present case does not establish such compelling circumstances. There is no specific evidence, for example, that Claimant was relieved or required to defer all or the greater part of his other duties on the eight days

on which he handled the disputed work, although Carrier expressly stated that he was not relieved of this other work. The evidence also fails to establish that such work belonged to Testmen in December 1955 and could not be performed by Maintainers at their regular rate of pay. The Assistant Superintendent's letter of December 15, 1955, directing Claimant to do the work in question is not controlling since it does not provide proof that would remedy these defects, particularly with respect to the earmarking of that work.

Award 7080 cited by Petitioner is not helpful to the claim since an Agreement containing the language of Rule 1, including its Note, was not before the Board in that case. Awards 1498 and 4828 concern situations that differ substantialy from that now before us, and the applicable Agreement, as we have noted, betrays no indication that it recognized a distinction between categories of signal tests and inspections so far as the work of the Maintainers and Testmen are concerned.

In view of the foregoing discussion, it is our conclusion that Claimant made the I.C.C. tests and inspections as part of his regular duties as a Maintainer and that Carrier was not in error in compensating him at his usual rate for this work. This conclusion is not affected by the parties' letter of June 28, 1951, to the Assistant Secretary of the Army since that letter concerned an entirely different situation, the approval of a new classification and rate of pay under the stabilization laws then in effect.

Under the circumstances, the claim will be denied.

FINDING: 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July 1961.

DISSENT TO AWARD 10012, DOCKET SG-9403

The majority has said that "The difficulty with Petitioner's position is that it is inadequately supported by the Agreement, record and cited awards. * * *"

The real difficulty with the award is that the majority elected to either ignore or explain away all that would support the position of the Employes. For example, the majority says: "* * * The evidence also fails to establish that such work belonged to Testmen in December 1955 and could not be performed by Maintainers at their regular rate of pay. * * *", which does not square with repeated assertions by the Employes throughout the record, not challenged by Carrier, that the class of work involved has always been performed by Testmen since that Classification was adopted by the parties in 1952 and by Leading Maintainers prior thereto. Obviously, the majority is saying that the Employes should have proved that which was conceded by Carrier. As for the Agreement, especially the "Note" to Rule 1, which Carrier leaned on so heavily, impartial minds should have experienced no difficulty in seeing that the "Note" was designed to permit Testmen, other qualified signal department employes including supervisory officials, to do testing and inspecting in the performance of their respective duties. By the same token reasonable and impartial minds would not have, under the facts and circumstances recorded in Docket SG-9403, interpreted the "Note" as an escape clause whereby the classification of "Testman" is rendered meaningless at the discretion of management.

Award 10012, for the reason above assigned, and for others obvious to the informed, seems more interested in upholding position of Carrier than in interpreting the parties' Agreement in the light of the facts; therefore, I dissent.

/s/ G. Orndorff
G. Orndorff
Labor Member