Award No. 10766
Docket No. SG-10329

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Eugene Russell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

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

(a) The Carrier violated the Signalmen's Agreement, particularly Rules 17, 18, and 25, when it refused to compensate R. J. LaFoe, who is classified as a Signal Testman under Rule 1, for the services performed after his regularly assigned hours on Saturday, February 16, 1957, which was the sixth day of his assigned work week, when called to perform signal work on the assigned territory of another employe classified as a Signal Maintainer under Rule 5 of the agreement.

(b) Signal Testman R. J. LaFoe now be allowed two hours and forty minutes at the time and one-half rate for the services rendered. (Carrier's File No. L-130-89.)

EMPLOYES' STATEMENT OF FACTS: On Saturday, February 16, 1957, Signal Maintainer L. W. Stickley was reported absent in accordance with Rule 19 of the agreement, and during his absence there was a signal failure on his assigned territory. The claimant, R. J. LaFoe, who is the regularly assigned Signal Testman, was called by Signal Supervisor E. L. Bartholomew at 9:30 P. M. on that date to correct the signal trouble at Signal 26 located near Rock Island Junction, El Reno, Oklahoma.

Claimant LaFoe did as he was directed and cleared the signal trouble at Signal 26 and was released from service at 10:45 P. M. the same date. The work performed by claimant LaFoe in clearing the signal was generally recognized routine signal maintenance work which is normally performed by the regularly assigned Signal Maintainer.

Since the service performed by Signal Testman LaFoe was not Signal Testman's work covered by his monthly salary, and since Saturday, February 16, 1957, was a rest day of the claimant's assigned work week, Form G-87 (which is a Carrier form used to report overtime and calls)

as Claimant LaFoe's monthly rate comprehends any and all services performed during the month, no claim can be made for any additional payment for alleged overtime on the sixth day as in this case. Payment for the sixth day is included in the monthly salary so the Carrier did not, therefore, refuse payment for the day. (See underlined portion of Rule 62).

To sustain this claim, your Honorable Board will have to write a new rule giving monthly-rated employes, whose salary covers all service rendered, additional compensation over and above that provided by the rule. Of course, your Board does not have the authority to do so nor can employes cite any rule in the agreement providing for such additional payment.

For the above reasons, we respectfully request your Board to deny the claim of the employes.

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

OPINION OF BOARD: This dispute involves an alleged violation of the Agreement as here in above set forth.

On Saturday, February 16, 1957, Signal Maintainer L. W. Stickley was reported absent in accordance with Rule 19 of the Agreement and during his absence there was a signal failure on his assigned territory. The Claimant R. J. LaFoe, who is the regularly assigned Signal Testman, was called by Signal Supervisor E. L. Bartholomew at 9:30 P. M. on that date to correct the signal trouble at Signal 26 located near Rock Island Junction, El Reno, Oklahoma. Claimant LaFoe cleared the signal trouble at Signal 26 and was released from service at 10:45 P. M. the same date.

Based upon the facts contained in this record your Board finds no violation of the Agreement.

The Claimant in this case is a monthly rated Employe under Rule 63 and his compensation had been fixed and paid in accordance with Rule 62. The work performed on the day in question was not exclusively that of Signal Maintainer under the Scope or any other Rule of this Agreement.

To grant the 2-8/12 hours additional compensation requested in this case would require a construction contrary to the specific terms of the Agreement between the parties and would be beyond the authority of this Board.

There are numerous awards of this Division in support of the conclusions reached in this case.

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 Contract 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 7th day of August 1962.

LABOR MEMBERS DISSENT TO AWARD 10766 — DOCKET SG-10329

The majority states:

> "The Claimant in this case is a monthly rated employe under Rule 63 and his compensation had been fixed and paid in accordance with Rule 62. The work performed on the day in question was not exclusively that of Signal Maintainer under the Scope or any other Rule of this Agreement."

The real question in this case was not the exclusive right of a Signal Maintainer to change-out a burned out signal lamp, but whether the claimant was entitled to extra pay while filling the position of another employe. The majority's award has the effect of writing the **Preservation of Rate** rule out of the Agreement in so far as monthly rated employes are concerned. The rule obviously contains no such limitation.

Rule 25 of the parties' Agreement provides:

> "An employe required to fill the place of another employe receiving a higher rate will receive the higher rate for time so assigned, except when an assistant signalman is required to relieve another assistant signalman, he will receive his own rate. An employe required to fill temporarily the place of an employe receiving a lower rate, will not have his rate reduced."

The record shows that, had the incumbent of the position been used, he would have received two (2) hours and forty minutes pay at the punitive rate. Since the claimant was filling that position, he too was entitled to that minimum call pay.

The Award is in error; therefore, I dissent.

W. W. Altus

/s/ W. W. Altus

CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S DISSENT TO AWARD 10766, DOCKET SG-10329

The obvious error of the dissenter is his erroneous assumption that the Claimant filled the position of another. The record clearly establishes that Claimant merely filled his own position.

To support Claimant's contention that he filled the position of a Signal Maintainer rather than his own position when he changed out the signal lamp, Petitioner submitted the argument of the General Chairman that "the Signalmen do have a monopoly on this work of changing out electric lamps in signals", and the Signal Maintainer on the involved district had "vested rights" to perform all of this work; but the evidence of record did not support that argument. Thus, whether the Signal Maintainer had an exclusive right to change out the signal lamp was a controlling question in the case, as submitted by Petitioner, and our decision on that question is definitely supported by the record.

The Award properly rules that the Signal Maintainer did not have an exclusive right to change out this signal lamp, and Claimant was filling his own position rather than that of a Signal Maintainer when he changed it out.

There is no error in **Award 10766.**

/s/ G. L. Naylor
G. L. Naylor

/s/ O. B. Sayers
O. B. Sayers

/s/ R. E. Black
R. E. Black

/s/ R. A. DeRossett
R. A. DeRossett

/s/ W. F. Euker
W. F. Euker

LABOR MEMBER'S REPLY TO CARRIER MEMBER'S ANSWER TO LABOR MEMBER'S DISSENT TO AWARD 10766, DOCKET SG-10329

The Award and answer to the dissent both twist facts in order to arrive at their erroneous conclusions.

There is no evidence in the record to indicate that the work performed by the claimant was any part of his assigned duties. There is, however, evidence that the replacing of a burned-out lamp is maintenance work. There is also evidence, and the Award admits, that the work occurred on the maintenance territory of another employe who's position the claimant filled.

It is quite evident that the Carrier, with premeditated intent to avoid the payment of just overtime, called the monthly rated claimant to fill the position of another employe. This was the true question in Award 10766, and the Carrier and Carrier Members' verbal ramblings concerning "exclusive right" is nothing more than deliberate confusion designed to mislead.

/s/ W. W. Altus

W. W. Altus

CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S REPLY TO CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S DISSENT TO AWARD 10766, DOCKET SG-10329

It is notable that the Dissenter fails to point to anything in the record that supports his accusations with regard to "twisting facts" and "deliberate confusion".

It is also notable that the only statement the Dissenter makes with reference to the controlling issue in this case is contradicted by the record. The ultimate issue is whether Claimant was filling the position of a Signal Maintainer, rather than filling his own position, when he replaced a burned-out signal lamp, a function which all parties agree was Signal Department work. With reference to this issue, the Dissenter remarks:

> "There is no evidence in the record to indicate that the work performed by the claimant was any part of his assigned duties. . . ."

The record indicates that throughout all handling of the claim on the property Carrier consistently maintained that the replacing of this lamp was one of the duties of Claimant, as a Signal Testman, and in support of that contention Carrier cited Rule 1 of the Agreement which reads in material part:

> "RULE 1. SIGNAL TESTMAN: An employe . . . who may perform any Signal Department work, . . ."

Since all parties concede that the work here involved is Signal Department work, Rule 1 establishes that it is work which may be required of a Testman, and this Rule would have supported **Award 10766** even if the burden of proof had been on Carrier, as is erroneously implied in the above-quoted statement of the Dissenter. But we trust that upon taking thought, the Dissenter himself will concede the elementary proposition that Claimant had the burden of proving all essential elements of his claim.

Where in this record is there any competent evidence tending to establish that under the facts of this case the replacing of the lamp was not part of the duties of the Signal Testman? We have found no such evidence. All that we have found in the record on this point consists of unsupported allegations of the General Chairman regarding alleged "vested rights" and "monopoly" of the Signalmen. This Board has repeatedly ruled that such unsupported assertions which are contradicted by the other side are not evidence.

If we have overlooked any competent evidence in this record which proves that Claimant was not filling his own position as Signal Testman when he replaced the signal lamp, the Dissenting Labor Member must share responsibility for the oversight, for he has never directed our attention to any such evidence, neither in his brief and arguments sub-

mitted in panel, nor in his dissent, nor in his answer to our answer to his dissent.

/s/ **G. L. Naylor**
G. L. Naylor

/s/ **O. B. Sayers**
O. B. Sayers

/s/ **R. E. Black**
R. E. Black

/s/ **R. A. DeRossett**
R. A. DeRossett

/s/ **W. F. Euker**
W. F. Euker