

Award No. 11729

Docket No. SG-11292

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jim A. Rinehart, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the provisions of Article 2, Section 23 (h) of the Signalmen's Agreement when at 11:45 P. M. on July 26, 1957, A. Goodman was released and R. T. Tarvin, Maintainer of Test, was held until 6:45 A. M., July 27, 1957, to perform work changing Automatic Signals 15.8 and 15.9 at Reading, Ohio, to hold signals on the territory maintained by A. Goodman.

(b) Maintainer A. Goodman be paid 7 (seven) hours at time and one-half because of the above violation. [Carrier's File: System Docket No. 64 — Buckeye Region — Case No. Z-25]

EMPLOYES' STATEMENT OF FACTS: On July 26, 1957, Mr. A. Goodman was working on his regularly assigned signal maintenance territory. On that date the Carrier was engaged in making some signal changes on that territory and it used Mr. Goodman to assist in making the changes and the subsequent tests. The Maintainer of Test from the adjoining territory was also used by the Carrier on that work. Mr. Goodman was released from duty at 11:45 P. M., though the Carrier did not release the Maintainer of Test until 6:45 A. M. on July 27, 1957. Inasmuch as the Carrier failed to use the regularly assigned Signal Maintainer for signal work on his assigned signal maintenance territory, Local Chairman W. Abner presented the following claim to Mr. G. F. Laser, Supervisor C&S, on August 18, 1957:

"I am presenting to you the following claim in behalf of A. Goodman Jr. Maintainer of Norwood Heights.

(A) Claim that the carriers violated the provisions of Article 2, Section 23(h) of the Signalman's Agreement when at 11:45 P. M. on July 26, 1957 A. Goodman was released and R. T. Tarvin, Maintainer of Test, was held until 6:45 A. M. July 27, 1957 to perform work changing Automatic Signals 15.8 and 15.9 at Reading, Ohio to hold signals on the territory maintained by A. Goodman.

The claim is predicated on the basis that the Claimant was not permitted to perform certain work and not on the basis of work actually performed. Therefore, in conformity with numerous awards of this Board that payment at the straight time rate is the proper payment for work not performed, the Claimant would not be entitled to payment at the time and one-half rate here claimed.

IV. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreements And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreements and to decide the present dispute in accordance therewith.

The Railway Labor Act in Section 3, First, Subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules and working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreements between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that the claim in this case has not been handled properly in accordance with the applicable provisions of Article V of the August 21, 1954 Agreement, and, therefore, is barred from consideration by this Board. It also has shown that the claim lacks the necessary merit to warrant a sustaining award by this Board, and, particularly, that the provisions of Article 2, Section 23 (h) of the Signalmen's Agreement were not violated as the Employees allege.

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

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employees, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

All data contained herein have been presented to the employee involved or to his duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: There is a Joint Statement of Agreed On Facts in this dispute stating the positions of the Claimant and the Carrier. That action by the parties disposes of the Carrier's claim, that the Board has no jurisdiction, on the reason that the Carrier did not have proper notice of the claim as it was handled on the property. Award 7446—Shugrue. Award 10075.

The contentions of the parties are further narrowed by the admission by Carrier in its letter to General Chairman Park, July 7, 1958.

"We agree that if the work had been strictly that of a maintenance nature, Claimant should have been permitted to remain on duty for the subsequent work."

That frank and solemn admission disposes of all questions except alone the one presented in the same letter, that the work of Maintainer-Test was not work normally performed by Claimant A. Goodman or that he was qualified to do.

"The work contemplated at time Claimant was relieved consisted of testing necessary to determine positively the cause and subsequent correction of these circuit functions which tests were to be performed under traffic.

"The correction of this condition could have involved anything from determining if an instrument was functioning properly to a major circuit revision which may have included the addition or changing of instruments or other appliances, also field testing and operation of several instruments with operating characteristics different from those previously installed were on hand for these tests, which work properly belonged to a Maintainer-Test."

We quote further from the same letter.

"The work performed by the Maintainer-Test was not work primarily associated with Claimant's assignment, that is, maintenance work, but involved installation of new equipment, considerable testing and signal circuit changing which required revision on signal circuit plans.

"Claimant's qualifications not being adequate to perform the majority of work required the supervision properly selected the senior qualified employee."

The Carrier consistently and throughout the dispute asserted that the work of Maintainer-Test was more exacting, required different qualifications and was not regularly done by Goodman. There is no outright denial of this by the Claimant and he admits that the work is not the kind performed on a maintenance territory every day.

The Claimant does contend, however, that he is the assignee of the job of Maintainer at the location Signal 13.7 and R. T. Tarvin Maintainer-Test was from another territory and notwithstanding he was filling the place of R. H. Lewis, the regular Maintainer-Test (during his absence therefrom) he did not take on the attributes and rights thereof possessed by Lewis. Since Tarvin had been regularly assigned to the job to perform the same work of Lewis he was a successor to Lewis, his alter ego and stood in his shoes. Thus, the unassigned day rule is not here involved. Tarvin was in effect a regular employee. Award 5811 — Carter.

Claimant cites no provision of the agreement which prohibits the Carrier from assigning a Maintainer-Test to work temporarily on other than his regular position. Award 5811 — Carter, Award 7446 — Shugrue. Tarvin had

greater seniority under the agreement, was already on duty, qualified to perform the work and was entitled to the overtime which would have belonged to Lewis at signals 15.8 and 15.9, had he been at work at his job. Award 5346—Robertson holds that overtime work arising out of a particular position belongs to the occupant of that position.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September 1963.