

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, 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

(a) That the Company has violated and is continuing to violate the Agreement and especially Article 1, Section 1, Article 1, Section 2 (a), and Article 5, Section 1 (i), beginning April 6, 1959, when W. D. Best, Leading Maintainer, headquartered at Marion, Indiana, was assigned to work with and supervise the work of more than the five (5) regularly assigned T&S Maintainers between M.P. 83.4 and M.P. 192.

(b) That W. D. Best be paid the Foreman rate for all time made from April 6, 1959, until such time as he is not assigned to work with and supervise the work of more than the five (5) regularly assigned T&S Maintainers. [System Docket No. 129 - Northwestern Region Case No. 33]

EMPLOYEES' STATEMENT OF FACTS: Prior to April 6, 1959, Mr. W. D. Best, the claimant in this dispute, had been assigned to a Leading Maintainer position with headquarters at Marion, Indiana. His assigned territory is divided into five (5) sections with a Maintainer assigned to each section, and he works with and supervises the work of these five Maintainers.

Beginning April 6, 1959, two Signalmen assigned to separate gangs were also assigned to work with Leading Maintainer Best. On April 18, 1959, Mr. W. D. Best, Local Chairman, presented the following claim to Mr. L. W. Hayhurst, Supervisor C&S:

"The Local Committee presents the following claim for your consideration and approval:

'(a) Claim that the Company has violated and is continuing to violate the Agreement and especially Article 1, Section 1, Article 1, Section 2(a) and Article 5, Section 1(i) beginning April 6, 1959, when W. D. Best, Leading Maintainer, headquartered at Marion, Ind., was assigned to work with and supervise the work of more than the five (5) regu-

The Carrier respectfully submits for the foregoing reasons the claim of the Organization is wholly lacking in merit under the terms of the Agreement and should be denied.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement 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 Agreement which constitutes the applicable Agreement between the parties, 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 or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to them. To grant the claim of the Employees in this case would require the Board to disregard the Agreements between the parties hereto 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 any such action.

CONCLUSION

The Carrier has established that no violation of the Agreement occurred by reason of the Leading Maintainer having been assigned to work with and to supervise one and two Signalmen during the period in question and the Claimant is not entitled to the compensation claimed.

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

(Exhibits not reproduced.)

OPINION OF BOARD: W. D. Best is regularly assigned as a Leading Maintainer on the territory for M.P. 83.4 to M.P. 192 with headquarters at Marion, Indiana. This territory is divided into five sections with a Maintainer assigned to each section. During the period from April 6, 1959 to April 22, 1959, a Signalman at Converse, Indiana was assigned to work with Leading Maintainer Best. During the period from April 13 to April 22, 1959, the Signalman at Gas City, Indiana, was also assigned to work with him. Mr. Best was instructed to furnish them with tools and materials and to supervise the work of replacing bond wires and of raising track outlets on the tracks. The five regular Maintainers worked in their respective territories while the two Signalmen performed these assigned duties.

Mr. Best presents the claim that Carrier violated the Agreement, specifically Article 1, Sections 1 and 2 (a) and Article 5, Section 1 (i), when it required him to work with and supervise the work of two Signalmen in addition to the five regularly assigned T. & S. Maintainers on his territory. He states that a Leading Maintainer is not in the Foreman Class but since he was assigned to the duties of a Foreman when he was asked to supervise seven men, he is entitled to compensation at the Foreman rate.

The determination of this claim centers on the interpretation of Section 2 (a) of Article 1 which reads as follows:

"Leading Maintainer: A maintainer working with and assigned to supervise the work of one or more signal maintainers, telegraph and signal maintainers, telegraph and telephone maintainers, or signalmen, with or without their assistants or helpers. The number of employees so supervised shall not exceed a total of five (5) at any one time. This paragraph does not apply to employees regularly assigned to and held responsible for the inspection, testing and repairs of relays, insulated wire or locking."

Was the Leading Maintainer working with and supervising the work of seven men at one time as Claimant contends or was he working with and supervising the work of the two Signalmen only while the other five Maintainers were on assignment to sections within the territory as Carrier maintains?

The rule limits a Leading Maintainer to working with and supervising no more than five employees at any one time. The phrase, "at any one time", leads us to conclude that he may work with and supervise a succession of different groups up to five men in each group as the needs of Carrier demand. Thus, Carrier may use a Leading Maintainer to supervise a group of men, relieve him of this responsibility of these men, and ask him to supervise and work with another group. This situation occurred in the instant case. The five Maintainers remained in their respective territories where they worked without supervision while the Leading Maintainer performed his duties of supervising the two Signalmen with whom he worked. The two Signalmen comprised one of a succession of groups which, under the rule, Carrier has the right to ask a Leading Maintainer to work with and supervise.

Claimant, in its argument, has urged that the Leading Maintainer supervised seven men. He fails to recognize that a Leading Maintainer was not supervising the five Maintainers who worked without any assistance from him.

Prior to this dispute, Organization attempted through negotiation to eliminate the phrase, "at any one time," from Article 1, Section 2 (a) with the purpose of limiting the responsibility of a Leading Maintainer to working with and supervising only one group not to exceed five employees rather than a succession of groups. After several conferences which failed to result in agreement, the parties submitted the issue to an Arbitration Board. On May 5, 1950, this Board submitted its decision in which it recognized that the Leading Maintainer could continue to supervise and work with a succession of groups. The phrase, "at any one time," was retained in the rule, but Paragraph C was added to Article 1, Section 2. It reads as follows:

"An employee classified under this Section shall not be held responsible for anything done by another employee when, at the time of the occurrence, he is not working with and assigned to supervise such other employee."

This provision relieves the Leading Maintainer from the continuing responsibility for the group with which he had worked and supervised. Claimant Best, according to this rule, therefore, was not responsible for the acts of the five Maintainers in their five respective districts while he worked with and supervised the two Signalmen.

Since Claimant did not work with and supervise more than five men at any one time, he is not entitled to be paid the Foreman's rate.

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

The Agreement of the parties 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 13th day of November 1964.