

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company that:

(a) The Carrier violated and continues to violate the current Signalmen's Agreement, especially Rule 68(a), when it failed to include the classifications of Assistant Signalman and Leading Signalman or Assistant Foreman in System Signal Gang No. 4.

(b) The Carrier should promptly bulletin and fill positions of Assistant Signalman and Leading Signalman or Assistant Foreman in System Gang No. 4, and pay the successful applicants the difference in what they earned and what they would have earned on those assignments for the length of time Carrier failed to fill the assignments. [Carrier's File: G-304-20, G-304.]

EMPLOYES' STATEMENT OF FACTS: On December 11, 1959, the Carrier abolished the position of Assistant Signalman in System Gang No. 4, which was accomplished by Bulletin No. 1557 dated December 11, 1959. This prompted General Chairman Tom McCamy to direct an inquiry to the Foreman of Gang No. 4 relative to the consist of the Gang. His communication is identified as Brotherhood's Exhibit No. 1.

The Foreman's reply in a letter dated January 9, 1960, that the Gang consisted of one Foreman, six Signalmen, and six Helpers, is identified as Brotherhood's Exhibit No. 2.

On January 12, 1960, the General Chairman directed a letter to Assistant Signal Engineer C. E. Pinkston in which he asked why the consist of the Gang did not conform to Rule 68(a) of the agreement. This letter is identified as Brotherhood's Exhibit No. 3.

Mr. Pinkston advised the General Chairman in a letter dated January 18, 1960, that, in his opinion, Rule 68(a) was not being violated (see Brotherhood's Exhibit No. 4).

Carrier therefore submits the employees' contention is not supported by the provisions of Rule 68(a), nor any other rule of the agreement; nor by the obvious intent of the rule; nor by the practice followed under the rule.

In view of these facts, the claim should be denied.

OPINION OF BOARD: The employees urge in this claim that the Carrier has violated Rule 68 of the Agreement. They contend that this rule sets forth the proper consist of gangs, and that Carrier's failure to include the classifications of Assistant Signalman and Leading Signalman or Assistant Foreman in System Signal Gang No. 4 in the instant case, constituted a violation of Rule 68 of the Agreement. They state that this rule is mandatory and urge that to hold otherwise could only serve to make the language meaningless.

The Carrier urges that Rule 68 is not mandatory, but that in fact, the rule recognizes the theory that the amount of supervision to be utilized is within the discretion of the Carrier. They further state that the rule is flexible to the extent that it provides for variations to be made in the consist of gangs in accordance with working conditions.

Rule 68 reads as follows:

"Rule 68. MAKE-UP OF GANGS.

"(a) It is agreed that well-balanced gangs should be made up according to the following examples, with variations permitted according to necessities or requirements of the work to be performed:

"Example 1:

1 foreman
2 signalmen
1 ass't. signalman
2 helpers

"Example 3:

1 foreman
1 ass't. foreman
8 signalmen
2 ass't. signalmen
5 helpers

"Example 2:

1 foreman
1 leading signalman
4 signalmen
1 ass't. signalman
2 helpers

"Example 4:

1 foreman
1 ass't foreman
10 signalmen
3 ass't signalmen
5 helpers"

We are of the opinion that Rule 68 is not to be considered mandatory. The language of the rule gives rise to the proposition that variations of the examples may be proper and necessary in accordance with the requirements of the work. The use of the word should, seems to be a controlling factor in determining the application to be given the language of the rule. It appears that the parties would have chosen a word more mandatory in nature, if they had intended that the examples given, be the sole and exclusive consist of gangs. Having determined that Rule 68 is not mandatory in nature, we

must conclude that the Carrier had the prerogative to act as it did in this case.

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 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 29th day of January 1965.