

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

BROTHERHOOD OF RAILROAD SIGNALMEN

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

In behalf of Signal Maintainer R. L. Smith, with assigned headquarters at Lewis Street Tower, Chattanooga, Tennessee, for eight (8) hours each day on October 1 and 2, 1959, at the rate of time and one-half account the Carrier improperly assigning Assistant Signal Maintainer H. G. Black to perform work as Signal Maintainer on Signal Maintainer Smith's regular assigned territory in violation of Rule 13 (h) and other rules of the Signalmen's Agreement. [Carrier's File: B-738]

EMPLOYEES' STATEMENT OF FACTS: Claimant R. L. Smith held a regularly assigned territory and position as Signal Maintainer with headquarters at Chattanooga, Tennessee on October 1 and 2, 1959, the dates that are involved in this dispute. These dates were his regular assigned rest days. H. G. Black was also headquartered at Chattanooga, Tennessee on the above dates, and his regularly assigned position was as an Assistant Signalman, as he held no seniority as a Signalman or Signal Maintainer. The dates involved were regular work days for Mr. Black.

On October 1 and 2, 1959, the Carrier sent Mr. Black, alone, to Whiteside, Tennessee, a distance of 14 miles from Chattanooga, according to the Carrier's timetable, to perform work.

On November 14, 1959, Local Chairman J. L. Fain filed a claim on behalf of Mr. Smith for eight hours' pay each day, October 1 and 2, 1959, at the rate of time and one-half account the Carrier improperly assigning an Assistant Signal Maintainer to perform work as a Signal Maintainer on Smith's regular assigned territory in violation of the effective Agreement. The claim filed is identified as Brotherhood's Exhibit No. 1.

On December 22, 1959, Supervisor H. N. Dixon addressed a letter to Mr. Fain denying the claim. This letter is identified as Brotherhood's Exhibit No. 2.

In a letter dated December 28, 1959, Local Chairman Fain appealed Mr.

so as to prevent an assistant signalman or assistant signal maintainer from performing signal work on any part of an interlocking plant separate and apart from the signalman or signal maintainer with whom he is working on the same plant, but it is not intended that an assistant shall be sent out on line of road or to other interlocking plants in the same terminal to perform alone (without the presence of a maintainer or a signalman) work recognized as distinctively maintainers' or signalmen's work."

As no work was performed by Mr. Black which has been recognized as distinctively maintainers or signalmen's work, coupled with the fact that the handling given was in line with the past practice, the management saw no reason to change its decision in the case.

Carrier submits the facts show there was no necessity for calling out Maintainer Smith (Claimant) on his rest days, October 1 and 2, contractually or otherwise; that Rule 13 (h), Rule 6 the Interpretation dated April 26, 1951, nor any other rule of the NC&StL District Signalmen's Agreement supports the claim, for which reason same should be declined.

OPINION OF BOARD: The T.V.A. installed a power line over the Carrier's right-of-way on October 1 and 2, 1959. The Division Engineer instructed Lead Signal Maintainer Crownover to see that the railroad's installations were protected. Crownover sent his Assistant, Black, to observe the installation by the T.V.A. and to report any trouble which might arise. The work involved was completed without difficulty.

The dates involved were the assigned workdays of Lead Signal Maintainer Crownover and Assistant Signal Maintainer Black, and the assigned rest days of Maintainer Smith, the instant Claimant.

Carrier argues that the observing of the T.V.A. operation and the flagging of trains is not work reserved exclusively to employees covered by the applicable Agreement on this Carrier. They further contend that this work could have been assigned to any of their employees. We are not particularly concerned with what might have been, or even what hindsight may show, should have been done by the Carrier. The record indicates that the Carrier dispatched Assistant Signal Maintainer Black to perform the work involved in this case, and that they compensated him at the Signal Maintainer's rate of pay. We hold that they are now estopped from asserting that the work involved was not that which required a Signal Maintainer. We are not persuaded by their argument that they simply made a mistake in paying the Signal Maintainer's rate.

Carrier further argues that, "no Signal Maintainer's work or work of any kind, for that matter, was performed by the Assistant Maintainer".

We find this logic hard to accept. The man was sent out to observe the actions of the TVA employees and to report any difficulty which might be encountered. The fact that the job went without incident is insufficient to prove that no work was performed. The observations which were made were certainly considered necessary by the Carrier, and in and of themselves constituted work. The Carrier prevented us from determining what type of work was involved, when they compensated Black at the Signal Maintainer's rate.

Rule 13 (h) of the Agreement reads as follows:

"(h) Where work is required by the railway to be performed on a day which is not a part of any assignment, it may be performed by an available unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

Since the Carrier treated this special assignment as Signal Maintainer's work, we hold that the Claimant, as the regular employe of the one and only Signal Maintainer assignment at this point was entitled to the work. This holding is predicated upon the peculiar facts incident to this claim, and is limited thereto.

It should be pointed out that the work involved in this case was not performed by the Assistant Maintainer as the holder of a rest day relief assignment. He was the holder of a regular assignment. We do not find where we can co-mingle seniority classes for relief purposes.

The claim is presented for compensation at the rate of time and one-half. Carrier argues that time and one-half is payable only for work performed as overtime or on rest days. They contend that since Claimant was not called, he therefore did not work, and consequently should not be compensated at time and one-half. However, it should be pointed out that the obvious reason Claimant did not work, is because he wasn't called by the Carrier. We are inclined to follow the principle that the appropriate rate is the one which the regular employe would have received had he performed the work in question. In this case that rate would be at time and one-half.

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 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1965.