

Award No. 13376
Docket No. SG-13292

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Milwaukee, St. Paul and Pacific Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 66, when it failed and/or refused to transfer Mr. L. A. Mahnke to the Signal Maintainer position to which he was assigned by letter of November 3, 1960, file 13 CT, within fifteen days after the close of the bulletin.

(b) The Carrier should now be required to compensate Mr. Mahnke for eight hours' pay at the pro rata rate of the position to which assigned for each work day of that position Wednesdays through Sundays from November 16, 1960, until December 4, 1960, inclusive.

(c) The Carrier should also be required to compensate Mr. Mahnke the difference between the amount received and the over-time rate of pay of the position to which assigned by letter of November 3, 1960, file 13 CT, for every Monday and Tuesday that he has worked from November 16 until December 7, 1960, inclusive.

[Carrier's File Case: F-1038]

EMPLOYEES' STATEMENT OF FACTS: This dispute arose as a result of the Carrier's failure and/or refusal to transfer a successful applicant to his new assignment within fifteen (15) days after the close of the bulletin, as provided for in Rule 66 of the current Signalmen's Agreement.

Prior to the time this dispute arose, Mr. L. A. Mahnke was on a Leading Signal Maintainer position at Tower A-2, Western Avenue, Chicago, Illinois. As shown by Brotherhood's Exhibit No. 1, his regular days off duty while on that position were Saturdays, Sundays and Holidays.

Under date of October 20, 1960, the Carrier advertised a 3 to 11 P.M. Signal Maintainer position at Tower A-2, with regular days off duty Mondays and Tuesdays. That Bulletin is Brotherhood's Exhibit No. 2.

It will be noted that during the period of the instant claim, i.e., November 16 until December 7, 1960, there were 14 working days on which Claimant Mahnke performed service on the Leading Signal Maintainer position and 1 holiday on which Claimant Mahnke did not work but on which he received 8 hours holiday pay at the pro rata rate thereby making a total of 15 straight time days and during that same period there were 14 working days on the lower rated second trick Signal Maintainer position and 1 holiday on which Claimant Mahnke would not have worked but may have, if the requirements of the holiday pay rule were met, received 8 hours holiday pay at the pro rata rate thereby making a total of 15 straight time days, the same as on the Leading Signal Maintainer position. In other words, if it had been possible to transfer Claimant Mahnke to his lower rated new assignment on the second trick Signal Maintainer position he would, during the period of the instant claim (November 16 until December 7, 1960) have conceivably received payment for 15 straight time days at \$21.008 per day (\$2.626 per hour) or a total of \$315.12. During that same period (November 16 until December 7, 1960) Claimant Mahnke did actually receive payment for 15 straight time days at \$21.488 per day (\$2.686 per hour) or a total of \$322.32. It is clearly apparent that although it was not possible, due to operational requirements, to transfer Claimant Mahnke to his lower rated new assignment on the second trick Signal Maintainer position until December 7, 1960, yet by allowing him the higher rate of the Leading Signal Maintainer position he received, during the period of the claim, i.e., November 16 until December 7, 1960, earnings in excess (\$7.20) to that which he would have received had he actually been transferred to and performed service on his new lower rated second trick Signal Maintainer assignment or, in other words, there were no lost earnings on Claimant Mahnke's part during the period of the instant claim, but in fact he "made money".

As stated previously, Rule 66 does not prescribe any penalty in the event the transfer of a successful applicant to his new assignment cannot, as in the instant case, be made within 15 days, nor does any other rule or agreement provide for any penalty under such circumstances and in view thereof and in view of the fact that Claimant Mahnke suffered no lost earnings, but in fact "made money" during the period of the instant claim the Carrier submits there is absolutely no basis for the payment being sought through the instant claim.

The Carrier further submits that it is readily apparent that by the claim which they have presented in behalf of Claimant Mahnke the employees are attempting to secure through the medium of a Board Award in the instant case something which they do not now have under the rules and in this regard we would point out that it has been conclusively held that your Board is not empowered to write new rules or to write new provisions into existing rules.

It is the Carrier's position that there is absolutely no basis for the instant claim and we respectfully request that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts and issues in this case are comparatively simple.

We are concerned primarily with Rule 66 (b) of the Agreement which reads as follows:

"(b) Transfer of successful applicants to new assignments will be made within fifteen (15) days after close of the bulletin. . . ."

The position of 2nd trick Signal Maintainer was advertised October 20, 1960, in Signal Bulletin 170-60. On November 3, 1960, Claimant Mahnke was advised that he was being assigned to that position. On December 7, 1960, Claimant was notified he was to take over the regular duties of the position. Claimant contends he should be compensated for every day he was improperly held out of the 2nd trick Signal Maintainer position and for the time he was required to work on the rest days of the position if he had been properly transferred.

Carrier contends that prior to making application for and being assigned to the 2nd trick Signal Maintainer position Claimant was the regularly assigned occupant of the Leading Signal Maintainer position at Tower 2; that from November 16, 1960, through December 6, 1960, Claimant occupied and was paid the higher rate of the Leading Signal Maintainer position; that he was off two rest days on each week that he thus worked; that there were no lost earnings on Claimant's part during the period of the Claim (which is not denied) but to the contrary he received compensation in excess of that he would have received on the new position; it is Carrier's further contention that operational requirements prevented Claimant's transfer to the new position (this is not denied by Claimant in the record); Carrier maintains that Rule 66 (b) does not contemplate any penalty in the event the transfer of a successful applicant to his new assignment cannot, as in the instant case, be made within fifteen (15) days.

Rule 84 of the Agreement reads as follows:

"RULE 84.

An employe covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement will be reimbursed for such loss by the Railroad Company."

There is nothing in the record indicating the Claimant has in any respect sustained any loss of earnings nor that Claimant has in any way been damaged.

Though it is debatable whether or not there has been any actual violation of the Agreement under the facts of this case, if necessary to preserve the rights of the Organization under the Agreement, we do find that there has been a failure on the part of the Carrier to comply with the provisions of Rule 66 (b) of the Agreement. The action of the Carrier was neither willful or deliberate.

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

Carrier has failed to comply with the provisions of Rule 66 (b) of the Agreement.

AWARD

Claim denied in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1965.