Award No. 14134
Docket No. SG-14308

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island and Pacific Railroad Company:

(a) On behalf of L. W. Egger for Leader's rate of pay on the following dates: January 8, 1962, 8 hours at straight-time rate and one hour at punitive rate; January 9, 8 hours straight-time rate and two hours at punitive rate; January 10, 8 hours at straight-time rate and two hours at punitive rate; January 11, 8 hours at straight-time rate and two hours at punitive rate; January 12, 8 hours at straight-time rate.

(b) On behalf of Assistant Signalman D. H. Turner for the difference between his Assistant's rate of pay (step rate) and that of Signalmen's rate of pay, which is $2.626 per hour, for the following dates: January 8, 1962, 8 hours at straight-time rate and one hour at punitive rate; January 9, 8 hours straight-time rate and two hours at punitive rate; January 10, 8 hours straight-time rate and two hours at punitive rate; January 11, 8 hours straight-time rate and two hours at punitive rate; January 12, 8 hours at straight-time rate.

[Carrier's File: L-130-251]

EMPLOYES' STATEMENT OF FACTS: The Statement of Claim constitutes a claim that was initiated on March 2, 1962. Paragraph (a) was later allowed, but it was included in our Statement of Claim, for information, because it was part of the original dispute.

Mr. Egger held a Signalman position, and Mr. Turner an Assistant Signalman position, on Gang No. 4. They were taken from the gang, transported to Shamrock, Texas, where they performed work on January 8, 9, 10, 11 and 12, 1962, restoring a pole line which had been damaged by an ice storm.

The claim on behalf of Signalman Egger for the Leading Signalman rate of pay was filed on the basis he was in charge of the work and Mr. Turner, and therefore entitled to the higher rate of pay.

The claim on behalf of Assistant Signalman Turner for the Signalman rate of pay was filed on the basis Mr. Egger was filling a Leading Signalman

adjustment. The statement that there was no signalman simply is not correct. Mr. Egger was the signalman and performed signalman's work during the period involved just as is provided in Rule 3. While performing this work other factors having no connection to his performance of his signalman's duties served to convert his rate to that of a leading signalman, but these were separate and apart from his continued performance of work as a signalman.

The Board will note that in Carrier's Exhibit E the General Chairman has cited previous settlements which he states are similar in principle to the instant case. The Carrier points out the cases were not similar in its Exhibit F, but believes it should explain the basis for settlement of what is referred to as the "Cox settlement' 'in those exhibits.

The facts in the Cox case were as follows:

Mr. Wisely and Mr. Cox were working as Signalman and Assistant Signalman respectively from June 15 to July 8, 1959. Mr. Wisely then went to the hospital and Mr. Cox worked alone until July 31, 1959. A claim was filed in 3 parts:

Claim 1 — That Mr. Wisely be allowed leader's rate from June 15 to July 8, 1959.

Claim 2 — That Mr. Cox be allowed signalmen's rate during the same period.

Claim 3 — That Mr. Cox be allowed leader's rate after July 8, 1959.

Claim 1 was allowed, Claim 2 was not allowed and Claim 3 was allowed.

The Board will note from Carrier's Exhibit I (General Chairman's letter to Signal Engineer dated July 17, 1959), Carrier's Exhibit J (letter from Signal Engineer to General Chairman dated August 10, 1959), Carrier's Exhibit K (letter from General Chairman Watkins to Signal Engineer dated September 15, 1959), Carrier's Exhibit L (letter from Signal Engineer to General Chairman dated September 18, 1959) and Carrier's Exhibit M (letter from General Chairman to Signal Engineer dated September 21, 1959) that the part of the Cox settlement which was not allowed is the part of the cited claims which is similar to the instant case.

Under Rule 5 of the Agreement Mr. Egger was "An employe assigned to perform work generally recognized as signal work."

Also under the Note to Rule 5 Mr. Egger was "an employe working in a gang" which shall mean a signalman as defined in the note. The fact that his rate of pay was altered by factors entirely foreign to his continued performance of work as a signalman as set forth in Rules 3 and 5 had no effect upon nor in any manner changed the status of claimant Turner — as evidenced by the Cox settlement.

This claim has no support under the Agreement and it should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The two Claimants involved herein, L. W. Egger and D. H. Turner are classified as Signalman and Assistant Signalman respec-

tively. An ice storm damaged some pole lines, precipitating an emergency condition in the vicinity of Shamrock, Texas. Both Claimants were assigned the duties of repairing the damage in the area, from January 8 to 12, 1962, inclusive.

The Organization, thereafter, filed claims on behalf of the two employes alleging that the Carrier had violated the effective Agreement between the parties. These claims were initiated on the basis that Signalman Egger, as set forth in claim (a), should have been compensated at the Leading Signalmen's rate of pay.

As a result of conferences held on the property, claim (a), i.e., the one for Signalman Egger, was subsequently allowed by the Carrier, and, therefore, was withdrawn by mutual consent of the parties.

Claim (b), however, was contested by the Carrier and is properly before this Board for consideration. It involves an interpretation of Rule 6 of the effective Agreement and is herewith quoted:

"RULE 6.

ASSISTANT SIGNALMAN-MAINTAINER

Assistant signalman-maintainer is an employe in training for a position of signalman or signal maintainer working under the direction of signalmen or a signal maintainer with whom he shall have common headquarters. Assistants need not at all times work under the immediate supervision of signalmen or signal maintainers, but may work by themselves within the territory, gang, or shop to which assigned."

Both parties to this dispute substantiate their position through the medium of Awards previously rendered by this Board. Each, therefore, contends that those awards which favor its position are precedents which should not be disturbed precipitously, thus, in effect, creating an anomalous situation. In order to properly evaluate the significance of these prior Awards, we are constrained to discuss them.

The Organization cites three historical awards, among others, which purport to support its version that the instant claim should be sustained. They are Award Nos. 3956, 6263 and 11173.

Award No. 3956 (Carter), adopted by this Board in June, 1948 involved an Agreement between the Erie Railroad Company and this Organization. The pertinent portion of Rule 5 (Assistant Signalman) is herein quoted:

"Rule 5 — An employe in training for a position of signalman or signal maintainers, working under the direction of (but not at all times with) a signalman or signal maintainer shall be classified as an assistant signalman or assistant signal maintainer.

NOTE: When an assistant signalman or assistant signal maintainer is working alone and doing the work of a signalman or signal maintainer he shall receive the higher rate."

The facts in that case reveal that an Assistant was working under the direction of a Foreman, without a Signalman present. We sustained the claim and stated as follows:

> "It is evident from the working of this rule that an assistant signalman or assistant signal maintainer must be working under the direction of a signalman or signal maintainer to be classified as an assistant. If, while working alone, he performs the work of a signalman or signal maintainer, he is entitled to the pay of those positions. In other words, an assistant must get his training from a signalman or signal maintainer. The note attached to the rule precludes an assistant from performing the work of a signalman or signal maintainer except when working alone."

It is noteworthy, that there are two essential differences between the situation indicated in Award 3956, and the instant dispute. In the cited Award, the Rule provided that when an Assistant worked alone and was performing the work of a Signalman, he would be paid the Signalman's rate. Furthermore, he was under the direction of a Foreman, without a signalman being assigned to the gang.

Perhaps, what is disturbing us now is the use of the expression in the quoted portion that:

> ". . . must be working under the direction of a signalman or signal maintainer to be classified as an assistant."

However, we should also recognize that Rule 5 in the preceding award, contained the following words enclosed in brackets," (but not at all times with)." Somehow, these words were lost sight of, as well as the apparent intent of the parties to describe who is an assistant signalman. Ordinary words were used and their plain meaning should be imputed to these words. That rule, in essence, states that an assistant is one who is in training; he is trained by a signalman; and works under the direction of a signalman — but not at all times. But, if he works alone and performs the work of a signalman, then he shall receive the higher rate. (Rule 6 in the instant dispute also provides that assistants need not at all times work under the immediate supervision of signalmen — but may work by themselves —).

It appears to us that this is both sensible and logical. It is axiomatic that an employe who performs the work of a higher classification should be paid the higher rate, absent a provision negating such intent.

Therefore, on the basis of the facts alleged in Award 3956, it was proper for us to conclude that the Carrier violated the Agreement. This was required on the ground that the Assistant was under the immediate direction of a Foreman, without a Signalman being assigned to the crew; and also when he worked alone. However, it should also be apparent that we initiated an enigma by stating that an Assistant must be working under the direction of a Signalman. In effect, it apparently debilitated the significance of the bracketed words which provided that the assistant need not be working under the direction of a Signalman at all times.

Thereafter, Award No. 6263 (Wenke), was adopted by this Board in July, 1953, and involved the same disputants as those in Award No. 3956. It should also be borne in mind that Rule 5 had now been previously construed. Hence, this Board said:

"However, Rule 5 classifies an Assistant Signalman as: 'An employe in training for a position of signalman . . . working under the direction of (but not at all times with) a signalman or signalman maintainer. . . .' This Division has construed this rule to mean '. . . that an assistant signalman . . . must be working under the direction of a signalman or signal maintainer to be classified as an assistant. . . . In other words, an assistant must get his training from a signalman or signal maintainer . . . the manner of doing the work must be under the direction of a signalman or signal maintainer under the plain meaning of this rule.' See Award 3956."

It is essential, however, that we focus our attention on the language contained in the paragraph immediately preceding the last quote from Award 6263, wherein the following was said:

"A Leading Signalman is classified by Rule 3 of Article 1 of the parties' Agreement as: 'An employe assigned to work with and direct the work of other employes specified herein . . .' Ordinarily this rule would give Leading Signalmen the right to direct the work of Assistant Signalmen as they are other employes specified herein. See Rule 5 of Article 1."

It is therein properly recognized that a Leading Signalman has the right to direct the work of Assistant Signalmen, inasmuch as they are other employes. Nevertheless, we proceeded to follow the guide lines established in Award 3956, without an awareness of the forceful logic contained in the preceding principle, as it involved the same parties and the same rule.

In Award No. 11173 (Dolnick), adopted by this Board in February, 1963, the following situation was involved:

"On August 30, 1956, and September 11, 1956, the Signal Foreman was off duty. A Leading Signal Tester was assigned by the Carrier to fill the Signal Foreman's position and the Signal Repairman was assigned to fill the position of the Leading Signal Tester. Claimant, an Assistant Signal Repairman, remained at work under the direction of the Leading Signal Tester. The claim is for the difference in pay between the rate of Assistant Signal Repairman and that of Signal Repairman for August 30 and September 11, 1956."

We believe it to be extremely noteworthy that the following principle was therein expressed:

"The mere fact that Claimant worked under the primary supervision of a leading Signal Tester, does not per se entitle Claimant to the higher rate of pay. A leading Signal Tester also has the right to supervise employes of lower rank, including Assistant Signal Repairmen. Several classifications of employes have supervisory authority. Signal Foremen, Leading Signal Testers and Leading Signal Repairmen supervise and direct the work force. Rule 2 provides as follows:

'Leading Signal Testers: An employe who is regularly assigned to supervise, make tests and perform work in connection with inspection, testing and repairing of signal apparatus and appliances shall be classified as a Leading Signal Tester.'

> The claim cannot be determined solely on the basis of primary supervision. It needs to be resolved on the basis of the work involved and the kind of supervision which the particular work requires, if any."

also, the following statement is worthy of quote:

> "There is no denial that neither on August 30 nor on September 11, 1956 was there a Signal Repairman on duty. While the Carrier, unquestionably, had the right to blank that position for the two days, there is also every reasonable assumption that the Assistant Signal Repairman remained on duty to do all of the signal repair work required on those days. Whether he did the work expertly and efficiently is immaterial."

Hence, we apparently sustained the claim on the basis that, "there is also every reasonable assumption that the Assistant Signal Repairman remained on duty to do all of the signal repair work on those days."

What conclusions, therefore, may we draw from a review of the latter Award?

1. That an assistant may work under the supervision of a Leadman.

2. While an assistant works under the supervision of a Leadman, this does not **per se** entitle him to a higher rate of pay.

3. A Leading Signalman may supervise an Assistant.

4. Therefore, whether an Assistant is supervised by a Leadman is not the criterion which will determine if he is entitled to a higher rate of pay. Rather, the factor which will determine the Assistant's rate of pay will be based on the work he performs at that time.

We believe these conclusions to be proper and essentially correct. Furthermore, a synthesis of these previous awards, in conjunction with more recent awards issued by us, may possibly serve to obviate future disputes.

As recently as November, 1965, this Board adopted Award 13950 (Coburn), wherein the following facts were present:

> "Here the facts show that a Leading Maintainer on dates of claim performed Maintainer's work and was assisted by the Claimant, an Assistant Signalman.
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> * * * * *
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> The Employes also allege that Claimant performed mechanic's work on claim dates, and should, therefore, have been paid at the Maintainer's rather than at the Assistant Signalman's rate. The Carrier denied the allegation. There is no material evidence of record to support the Employes' contention. It will, therefore, be dismissed."

We believe that the latter principle is peculiarly applicable to the dispute herein. Originally, the instant dispute involved two claims, one for the Signalman and the second for the Assistant. The Carrier properly paid claim (a) sub-

mitted by the Signalman for the Leader's rate of pay, pursuant to a Memorandum of Agreement executed April 8, 1958, which amended Rule 3 of the effective Agreement.

However, we are compelled to deny claim (b) on behalf of the Assistant, for Signalmen's rate of pay. The sole thrust of the Organization's claim in behalf of the Assistant is predicated on the bare fact that the Signalman received the higher rate of pay for Leading Signalman; hence, this left the Assistant without a Signalman to direct him. Without credible proof detailing the work which the Assistant actually performed, such contention is meretricious and fallacious.

We have amply demonstrated that the controlling principle applicable to the instant dispute is not whether a Leading Signalman directed the Assistant, but rather, for an Assistant to receive the higher rate of pay of the Signalman, he is required to actually perform that work. In the instant situation, the Organization has failed to offer a scintilla of proof to that effect. It bottomed its claim solely on the premise that the Signalman who was present received the Leading Signalman's pay, therefore, no Signalman worked; and ipso facto, the Assistant was entitled to the Signalman's pay. As a matter of fact, the Signalman who was actually there, directed the Assistant. However, in view of the 1958 Amendment to Rule 3, he also received the higher rate of pay. We might add, that if the record had contained evidence that the Assistant had actually performed the work of a Signalman, he would have been entitled to the higher rate of pay. However, we may not indulge in such a presumption, absent proof to that effect. We would also include the proviso that an Assistant is required to receive his training from a Signalman.

In conclusion, we would venture the thought that a careful analysis of the principle advanced herein, does not actually seriously conflict with, nor is it inconsistent with precedent.

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 not violated.

AWARD

Claim (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of February 1966.

DISSENT TO AWARD 14134, DOCKET SG-14308

This Award errs in at least two major respects. First, in the conclusion finally reached and, second, in the immaturity of the reasoning employed by the Majority in reaching the conclusion.

Regarding the latter, a mere reading of what the Majority has to say about Awards 3956 and 6263 shows the state of confusion under which they labored and contrary to their assertion that the Division overlooked language and initiated an enigma in Award 3956, closer attention to the full text of 3956 would have disclosed that the Division actually gave effect to the well-established principle that in construing rules they should be, if possible, reconciled in meaning, and it is to be presumed that they can be. Conflict is not intended and it is to be studiously avoided. Nor should strained and unreasonable interpretation be given to the language of the rule. The Majority has by way of omission and distortion not only read conflict into the rule involved, standard in one form or another in all Signalmen's Agreements, but also placed such a strained and unreasonable interpretation upon unequivocal language as to render the rule meaningless.

Having done such a complete job of twisting what was said in 3956, it is understandable that the Majority would see only that part of the Opinion in Award 6263 as is useful to its purpose.

It is observed that no minority opinion was filed in either of these cases, and the Division's records will show that neither of the Referees were novices in the matter of construing railroad labor agreements.

With respect to Award 11173, here again the Majority notices only that part of the Opinion that serves its purpose. Had the reasoning set out in Award 11173 as a whole been applied, the instant claim would have been sustained.

In relying on Award 13950 the Majority apparently ignored the fact that in that case the Carrier succeeded in convincing the Division that the Leading Maintainer was on the dates involved working as a Maintainer. It is to be noted too that the Majority found that 13950 was distinguishable from 3956, 6263 and 11173.

Award 14134 falls far short of giving reasonable and practical application to the rules involved; therefore, I dissent.

G. Orndorff
Labor Member