

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company that:

(a) The Southern Pacific Company violated the current Signalmen's Agreement effective April 1, 1947 (reprinted April 1, 1958 including revisions), particularly Rules 2, 5 and 70.

(b) Mr. Richard McCoy be paid the difference between his Signalman rate of pay and that of C.T.C. Maintainer for the following days at eight (8) hours each: September 18, 19, 20, 21 and 22, 1961.

EMPLOYEES' STATEMENT OF FACTS:

This dispute concerns the following:

W. C. Mott, CTC Signal Foreman, Chemult, Oregon.
A. L. Kavanaugh, CTC Signal Maintainer, Delta, California.
Richard McCoy, Signalman, Signal Gang 8.

Foreman Mott is compensated on a monthly basis, and his duties consist of supervising the work of CTC Maintainers, one signalman who is carried on Foreman's payroll, and one signalman who carries his own time and who relieves the CTC Maintainer and other signalmen.

Maintainer Kavanaugh is a cut-back Foreman working in a lower class as provided for in Rule 43. While working as a CTC Maintainer, he is compensated on an hourly basis, and his duties consist of maintaining a portion of the Carrier's CTC (Centralized Traffic Control) System.

Signalman McCoy is compensated on an hourly basis, and received 6.4c per hour less than a CTC Maintainer.

Foreman Mott was absent because of illness during the week beginning September 18, 1961, and Mr. Kavanaugh was assigned to fill the temporary vacancy created by Mr. Mott's illness, as provided for in Rule 44. However, Mr. Kavanaugh was only shown on the timeroll as Foreman, and was required

"It is the prerogative of Management to determine the manner in which the work shall be performed."

AWARD 6856 (Carter):

"It is the duty of a Carrier to conduct the operation of a railroad in such a manner as to provide efficient, economical and satisfactory service to the shipping and traveling public."

AWARD 5467 (Carter):

"The determination of the number of employees to be used in the performance of work is the function of management except as limited by agreement. It was not contemplated that the carriers were to increase any class of assignments without regard for operating costs * * *"

Obviously, Petitioner's position in this case is not consistent with the foregoing.

CONCLUSION The claim in this docket is entirely lacking in merit or agreement support and carrier requests that it be denied.

OPINION OF BOARD: The Carrier's version of the facts in the instant case is at variance with that of the Organization.

The Carrier contends that on the dates for which the claim is made, CTC Signal Foreman W. C. Mott, with headquarters at Chemult, Oregon, was absent on account of illness; his position was not filled in that the duties of his position were not performed during his absence. During the period in question, A. L. Kavanaugh was assigned as CTC Signal Maintainer at Delta and had it been necessary to fill Foreman Mott's vacancy, Kavanaugh would have been used. However, since circumstances were such that it was possible to blank Mott's job, it was not necessary to use Kavanaugh thereon and for the entire period involved, he remained upon and filled the duties of his assigned position of Signal Maintainer at Delta. However, through the erroneous application of the provisions of the agreement, Kavanaugh was paid at the rate of pay of a signal foreman for this period, although he actually occupied the position of CTC Signal Maintainer. The Claimant, Richard McCoy, was assigned as Assistant Signalman on Signal Gang No. 8 during this period.

The Organization takes the position that the essence of this dispute is that Mr. Kavanaugh should have been sent to Chemult so that he could have assumed the full duties and responsibilities of the Foreman's position; that while he was being compensated as a Foreman he should not have been required to perform signal maintenance work which is work over which he, as a Foreman, had supervision; that if he had been sent to Chemult, the Mr. McCoy would have been used to fill the temporary vacancy on the CTC Maintainer position at Delta and would have received the CTC Maintainer rate of pay that is now being claimed by the Organization as set forth in paragraph (b) of the instant Claim.

From the above it can be seen that the issue raised by the argument advanced by the Employees is one of fact, i.e.: did the Claimant fill the job as claimed by the Organization or do the facts of record support the contention of the Carrier that, while the job of Foreman was vacant on account of the

illness of the regular incumbent of the position, were the duties of foreman in fact performed by the Claimant?

In support of its position the Organization claims:

(a) Craft work was diverted.

(b) The General Chairman stated on the record that the employees who work under the direction of Foreman Mott certainly received instructions from someone during the claim period and the only one to give such instructions was the Assistant Signal Supervisor.

(c) The acts of the Carrier were detrimental to at least one of its employees. It is obvious that the Carrier had a need to fill the positions of the absent Foreman and the CTC Signal Maintainer involved because said positions were in fact filled; the Foreman's position by the Assistant Supervisor and the Maintainer's position by its incumbent.

From the points listed supra, the Organization concludes that the record is clear that, had the Carrier not improperly diverted work of the Foreman's position, the CTC Signal Maintainer would not only have received the pay of the Foreman's position but would have been required to physically fill that position. As a consequence, the Claimant would have been used to fill the Maintainer's position and would have been paid the CTC Signal Maintainer's rate. Hence it follows that the Claimant has been damaged by the amount of the difference between the Signalman's rate and the CTC Maintainer's rate for the period involved.

The Carrier's defense is based on at least three assertions, viz:

1. the duties of the Foreman's position were not performed during his absence;
2. that the Carrier is not required to fill a vacant position, absent a contractual prohibition against blanking a job, which, in its judgment and discretion it is not necessary to fill;
3. Since the issue presented by the Organization is one of fact, the burden was upon the Employees to support their case with evidence in the record.

The Carrier contends that the Employees can point to no evidence in the record to support their allegations that the Foreman's position was in fact filled by a Supervisor, or that the duties of that position were performed by a Supervisor. The Carrier therefore argues that there is then left of the Employee's case only their contention that Rule 8(a), from the 40-Hour Week Agreement, prohibited the Carrier from blanking the Foreman's position. The Carrier seeks to buttress its argument by setting forth certain basic principles and offering, in support thereof, numerous citations of Awards, viz:

I. The Carrier has an absolute right to blank an assigned position in the absence of an Agreement Rule prohibiting such Action. (Awards: 13175, 12686, 934, 7256, 5528 and others too numerous to mention. There is no such rule in the Agreement.

II. The burden of proof is always on the Claimant who must