# Award No. 14488
# Docket No. SG-14367

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Benjamin H. Wolf, Referee**

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF RAILROAD SIGNALMEN

## SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY
**(System Lines)**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Spokane, Portland and Seattle Railway Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rules 7 and 24, when it required Relay Repairman Frank P. Allen, with headquarters at Portland, Oregon, to suspend work on his regular assignment in order to work at Tigard, Oregon, installing highway crossing signals under AFE (Authority For Expenditure) E-50-62, on October 1, 2, 3, 4, 5, 8 and 10, 1962.

(b) The Carrier be required to compensate Mr. Allen for fifty-six (56) hours at the overtime rate for the time he was deprived of working his regular assigned position; this to be paid to him in addition to his regular rate. [Carrier's File: 31-b; Case No. S-125]

**EMPLOYES' STATEMENT OF FACTS:** At the time this dispute arose, Claimant Allen was the incumbent of a Relay Repairman position at Portland, Oregon. Rule 7 of the Signalmen's Agreement classifies a Relay Repairman as an employe assigned to perform certain signal repair and adjusting work **in a shop.**

On the dates listed in our Statement of Claim, Claimant was required to suspend his work in the shop and perform signal construction work at Tigard, Oregon. According to Carrier's timetables, Tigard is 32.1 miles from Portland.

This dispute is based on our contentions (1) that Carrier violated Rule 7 when it required the Relay Repairman to perform work outside the shop to which he had been regularly assigned, and (2) that Carrier violated Rule 24 when it required the Relay Repairman to suspend his work in the shop

Reproduced as Respondent's Exhibit "A" is Bulletin No. 53-1 dated January 6, 1953 which advertised position of Relay Repairman for the first time; and Bulletin No. 53-2 dated January 19, 1953 awarding the position to Signalman A. E. Schwinof.

Schwinof held the position until April 5, 1961 when he was displaced by Claimant Allen, who thereafter held the position continuously through the period embraced by this claim.

During the entire period that the position of relay repairman has been in existence, the incumbent, when not engaged in repairing relays or other shop work, has been used to perform signal work on all parts of the system. Whenever such outside work took him away from Portland, his home station, he has been compensated under the applicable portions of Rules 26, 27 and 28 which deal with service away from home station.

Attached as Respondent's Exhibit "B" is statement, compiled from his "labor distrubution reports", showing some of the dates and hours the incumbent of the relay repairman position has been used to perform signal work away from his home station during the period January, 1954 through October, 1962. The source documents for this exhibit are in Respondent's files in the event your honorable Board desires to examine them.

On each of the dates involved in this claim, Claimant Allen performed signal work on a highway crossing signal installation at Tigard, a suburb of Portland. On each date he reported for service in the morning at Portland shop at his regular starting time, and went off duty at the Portland shop at his regular quitting time. His "time return" indicates that he filled his regularly assigned position of Relay Repairman on each claim date. He claimed and was paid eight hours pro rata at the rate of his regular position for each date. Claimant's time return for October, 1962, compiled by claimant himself, is reproduced as Respondent's Exhibit "C".

It was not until November 21, 1962, over a month later, that Petitioner's General Chairman Swift presented claim in behalf of Claimant Allen for an additional eight hours' pay at punitive overtime rate for each date of the claim.

Claimant did not on any of the claim dates perform other than signal work; nor did the signal work he performed involve any crossing of seniority lines within the craft. Indeed, no allegation to the contrary has been made by Petitioner.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Since January 1953, a relay repairman has been used to perform miscellaneous signal work outside the shop as his duties in the shop permitted and he has been compensated under the applicable portions of Rules 26, 27 and 28, which deal with service away from home station. The Organization does not deny the practice but contends that Rule 7 precludes a relay repairman performing any work except in the shop. It provides:

> "Rule 7. Relay Repairman. An employe assigned to repairing and adjusting relays, signals, signal apparatus, measuring instruments and/or other signal devices in a shop."

Work outside the shop, it argues, is work of a Signalman or Signal Maintainer who is described in Rule 9 which reads:

> "Rule 9. Signalman, Signal Maintainer: An employe assigned to perform work generally recognized as signal work. Signal work as referred to herein includes the maintenance, repair and construction work as outlined in the Scope of this Agreement."

The Organization argued that each and every provision of an agreement must be given meaning and effect if possible to do so. It urged that Rule 7 would be meaningless and ineffective if a Relay Repairman whose work is in a shop is required to work outside the shop.

As we read the whole Agreement, however, Rule 7 was not intended to be restrictive but merely descriptive. The language used is not restrictive. Article 1, of which Rules 7 and 9 are a part, is a classification article. Its purpose is to classify employes embraced within the scope of the Agreement according to function and level of pay. It happens that Relay Repairmen and Signalmen are in the same seniority classification and are paid at the same rate of pay. All other classifications, with one other exception, are paid their own specified rate of pay.

The Organization argued that if similar jobs receiving the same pay have been established and the only distinguishing feature is that one position is in a shop and the other is not, this distinction is lost if it is not enforced.

That argument is forceful only if we disagree Rules 26, 27, 28, 31 and 32, all of which would be meaningless and ineffective if Carrier were not permitted to move employes around from place to place and from job to job. Under the Agreement, if a relay repairman is called upon to do the work of another position he may run foul of other employes' seniority or job rights but he may not refuse the work. He must be paid properly and Rule 32 covers the case when he is required to work a higher rated position. Rule 32 would be meaningless if Carrier did not have the inherent right to move employes around as needed, provided there is no rule prohibiting it.

In Award 12668 (Dorsey) we considered a similar problem and we held that a similar classification rule was not an exclusive grant of work to each classification but was formulated "for the purpose of establishing rates of pay for work performed and the employes' exercise of their contractual seniority and promotion rights."

**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 Carrier did not violate the Agreement.

## AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1966.

## DISSENT TO AWARD 14488, DOCKET SG-14367

In this Award the Majority has violated the universally accepted rule of contract construction that all provisions of a contract are to be given effect if it is possible to do so. In so doing the specific will control the general provision, leaving the latter to operate in the general field not covered by the specific provision.

It doesn't require exhaustive search to discover that Rules 26, 27, 28, 31 and 32, relied upon by the Majority, are general provisions concerning travel and preservation of rates, whereas Rule 7 specifically pertains to the classification of Signal Repairman and just as specifically spells out that he is — "An employe assigned to repairing and adjusting relays, signals, signal apparatus, measuring instruments and/or other signal devices in a shop." — not in a shop **or** in the field.

I have no quarrel with the Majority's assertion that Rule 7 is descriptive. However, and unfortunately, the interpretation placed on the rule reduces it to a state of redundancy. For example, Rule 7 is not necessary to allocation of the work — Rule 9 is broad enough to cover that. Rule 7 is not necessary to the establishment of a rate of pay — the signalman rate is exactly the same as that of a Relay Repairman. Rule 7 is not necessary to the establishment of seniority — employes covered by classification Rules 4 through 9 are in the same seniority. Thus applying the reasoning employed by the Majority, Rule 7 is completely unnecessary.

I refuse to believe that the parties or either of them, when they negotiated and adopted Rule 7, intended to do a useless thing.

Had they applied the well-established principle that the function of this Board is to interpret and apply agreements as the parties make them without authority to rewrite the rules for the benefit of either party, the Majority would have found that a Relay Repairman is one performing the duties enumerated **in a shop.** They likewise would have found that if for some valid reason Rule 7 as written is not workable the way out is through negotiation.

Most distasteful is the fact that under the Majority's ruling an employe using his accumulated seniority to buy a job that is available has absolutely no assurance that the title or other information set out in the bulletin, as required by the rules, describes what is involved either as to title or conditions. Both are important to the applicant.

Award 12688 cited by the Majority is just as repugnant to the purpose of collective bargaining as the instant one. The present Majority through the

process of blind me-too'ism has simply compounded the error. Furthermore, the controlling provision in the two cases is not similar as alleged by the Majority.

This Award lacks that degree of mature thinking which the industry has a right to expect when disputes are submitted here for final adjudication; therefore, I dissent.

/s/ G. Orndorff

G. Orndorff
Labor Member

Keenan Printing Co., Chicago, Ill. Printed in U. S. A.