

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Devine, 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, 70.

(b) Mr. C. R. Dishman be paid the difference between his Assistant Signalman rate of pay and that of CTC Signal Maintainer for the following dates: August 21, 22, 23, 24, 25, 28, 29, 30, 31, and September 1, 1961.

EMPLOYEES' STATEMENT OF FACTS: This dispute involves the following signal employees:

Mr. W. C. Mott, Signal Foreman, Chemult, Oregon.

Mr. A. L. Kavanaugh, a cut-back Signal Foreman working as a Signal Maintainer at Delta, California.

Mr. C. R. Dishman (the Claimant in this dispute), a cut-back Signalman working as an Assistant Signalman on Signal Gang No. 8.

Mr. Mott is referred to by the Carrier as a CTC (Centralized Traffic Control) Signal Foreman. His principal duty is to supervise Signal Maintainers whose territories include part of a CTC system. Mr. Mott was on vacation on the dates listed in paragraph (b) of the Statement of Claim. Mr. Kavanaugh was paid the Signal Foreman rate of pay during this vacation period, though the Carrier required him to remain at Delta and continue to perform the duties of the position of Signal Maintainer. The essence of the claim is that (1) when Mr. Kavanaugh became a Signal Foreman he should not have been used to regularly perform the work over which he had supervision (violation of Rules 2 and 5), (2) that Mr. Dishman should have been used to fill the Signal Maintainer position at Delta, and (3) inasmuch as Mr. Dishman suffered a loss of earnings, he should be reimbursed for such loss in accordance with Rule 70.

The Brotherhood's Local Chairman presented the claim to the Carrier's Superintendent on September 13, 1961 (Brotherhood's Exhibit No. 1), and the Superintendent denied it on November 8, 1961 (Brotherhood's Exhibit No. 2). On November 18, 1961, the Local Chairman notified the Superintendent of the rejection of his decision, then referred this matter to the General Chairman.

The General Chairman presented an appeal (Brotherhood's Exhibit No. 3) to the Assistant Manager of Personnel on November 21, 1961, and they discussed the case in conference on December 21, 1961. Then, on December 29, 1961, the Assistant Manager of Personnel wrote his letter of denial (Brotherhood's Exhibit No. 4).

As evidenced by the correspondence cited above, this dispute was handled in the usual and proper manner on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement.

There is an agreement in effect between the parties to this dispute, bearing an effective date of April 1, 1947 (Reprinted April 1, 1958 including revisions), as amended, which is by reference thereto made a part of the record in this dispute. (Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: 1. There is in evidence an agreement (hereinafter called the current agreement) between the Carrier and its employees represented by the Petitioner, having effective date of April 1, 1947 (reprinted April 1, 1958, including revisions), a copy of which is on file with the Board and is hereby made a part of this submission.

2. From August 21 through September 1, 1961, CTC Signal Foreman W. C. Mott, headquarters Chemult, was absent on vacation and, under the provisions of Article 6 of the Vacation Agreement of December 17, 1941, as amended, his position was not filled during his absence.

3. During the period in question, A. L. Kavanaugh, assigned as CTC Signal Maintainer at Delta, was senior cut-back signal foreman, and had it been necessary to fill Foreman Mott's vacancy, Kavanaugh would have been the proper man to use, but since circumstances were such that it was possible to blank Mott's job, Kavanaugh was not so used, and for the entire period involved herein he remained on and filled the duties of his assigned position of signal maintainer at Delta. However, through error, Kavanaugh was paid at the signal foreman's rate of pay during this period, although he actually occupied his own assigned position of CTC signal maintainer. C. R. Dishman, hereinafter referred to as the claimant, was assigned as assistant signalman in Signal Gang No. 8 during this period.

4. By letter dated September 13, 1961 (Carrier's Exhibit "A"), Petitioner's Local Chairman submitted claim on behalf of claimant alleging he should have been used to fill Signal Maintainer Kavanaugh's position. Carrier's Division Superintendent denied the claim by letter dated November 8, 1961 (Carrier's Exhibit "B"). Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel by letter dated November 21, 1961 (Carrier's Exhibit "C"), and the latter denied the claim by his letter dated December 29, 1961 (Carrier's Exhibit "D"). (Exhibits not reproduced)

OPINION OF BOARD: During the period embraced by this claim, Fore

man Mott was on vacation; Signal Maintainer Kavanaugh was paid the Foremen's rate but required to remain on and work his regular Maintainer's position, and Claimant Dishman worked and was paid the rate of his Assistant Signalman's position on Gang No. 8.

The claim is presented on the premise that Kavanaugh was in fact a foreman and required in violation of Rule 2 to regularly perform work over which he had supervision and that the resulting available Maintainer's position should have been filled by the Claimant.

The assertions and meager evidence presented by Petitioner are not sufficient to support a sustaining award.

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

That the Claim shall be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of September 1966.