

Award No. 15018
Docket No. SG-13751

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**CHICAGO, ROCK ISLAND AND 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 that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly Rules 5, 8, 11, 14, 15, 17, 17 (g), 17 (k), 18, 19, 56, Seniority Rules, and an Understanding of April 18, 1950 (said Understanding confirmed by Carrier's letter of April 24 1950), when, during February, 1961, it established an additional first trick Signal Maintainer position, with rest days Thursdays and Fridays, at Silvis Classification Yard, yet continued to maintain the original first trick Signal Maintainer position with rest days Saturdays and Sundays, and abolished the second trick Signal Maintainer position with rest days Saturdays and Sundays.

(b) The Carrier now compensate J. P. Ward for the difference between his Signal Maintainer's rate of pay and that of a Leading Signal Maintainer's pay—a differential of 6¢ per hour for all Mondays, Tuesdays, and Wednesdays that he worked with the alleged second, first trick Maintainer—specifically March 6, 7, 8, 13, 14, 15, 20, 21, 22, 27, 28, and 29, April 3, 4, 5, 10, 11, 12, 17, 18, and 19, 1961, and all subsequent dates that he is required to work with the alleged second, first trick Maintainer, on a continuing basis as long as the agreement continues to be violated.

(c) The Carrier also compensate J. P. Ward, the original first trick Maintainer, for eight (8) hours at punitive rate that the alleged first trick (other Maintainer worked his assigned rest days (Saturdays and Sundays)—specifically March 4, 5, 11, 12, 18, 19, 25, and 26, April 1, 2, 8, 9, 15, and 16, 1961, and all subsequent Saturdays and Sundays that the alleged (other) first trick Maintainer is assigned to work, on a continuing basis as long as there is any violation of the agreement rules.

(d) The Carrier also compensate J. R. Sale, the alleged (other) first trick Maintainer for eight (8) hours at pro rata pay for the alleged (other) first trick man for all Thursdays and Fridays—specifically March 9, 10, 16, 17, 23, 24, 30, and 31, April 6, 7, 13, 14, and 21, 1961, and all subsequent Thursdays and Fridays he is required to take these Thursday and Friday rest days—since the position is a five-day position and is required to have Saturday and Sunday as rest days—on a continuing basis as long as there is any violation of the agreement rules.

(e) The Carrier also compensate J. R. Sale, the alleged (other) first trick Maintainer for eight (8) hours at punitive rate of pay for each Saturday and Sunday that he is required to work—as these should be his rest days—which violates Rule 14 in his absorbing the overtime on Saturdays and Sundays which rightfully belong to the original first trick. J. R. Sale is being worked in violation of Rule 15 as he is not working a five-day workweek in accordance with Rule 17—specifically March 4, 5, 11, 12, 18, 19, 25, 26, April 1, 2, 8, 9, 15, and 16, 1961.

(f) The Carrier also compensate J. R. Sale, who held the second trick position before it was abolished, for all days he was withheld from the original second trick which he held until March 3, 1961—specifically March 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, and 31, April 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, and 21, 1961, and all subsequent days until such time as the position is properly restored at his pro rata rate. This is a violation of Rules 14, 56, and others, as it is not a new position but is now a second trick position changed to avoid the payment of overtime and evade the application of Rule 17 in establishing a regular relief position to perform work on a regular assigned employee's rest days (instead of the established 7-day position on a regular 5-day assignment without such relief) and requiring the employee to absorb the overtime accruing to his regular assigned position. (Carrier's File: L-130-222)

EMPLOYEES' STATEMENT OF FACTS: Following the inception of the forty-hour work week rules effective September 1, 1949, one of the provisions of which is that five-day positions will have Saturday and Sunday as rest days, the Carrier established a staggered work week and made an assignment of overlapping signal maintenance territories which had previously been on a six-day assignment, which resulted in a portion of the signal maintainers having a work week of Monday through Friday and a portion of them having a work week of Tuesday through Saturday. This resulted in the Carrier having six day coverage on signal maintenance territories at the pro rata rate of pay, which was contrary to the intent and purpose of the forty-hour work week agreement.

This Brotherhood then filed claims for the affected signal maintainers who had other than a Monday through Friday assignment. That issue was disposed of with an understanding that the work-week of hourly-rated signal maintainers would be Monday through Friday with rest days Saturday and Sunday. That understanding, dated April 24, 1950, is attached hereto as Brotherhood's Exhibit No. 1.

After the installation of a classification yard at Silvis, Illinois, Carrier established sufficient signal maintenance positions to provide seven day signal maintenance service therein. Later on the third trick position was abolished, leaving a first and second trick with rest day relief man to relieve the first and second trick men on their rest days. Then, on September 28, 1960, the Carrier abolished the rest day relief position, which left two tricks working and the Carrier rightfully assigned both tricks to work Monday through Friday, with rest days Saturday and Sunday. The first trick man worked from 7 A.M. to 3 P.M., and the second trick from 3 P.M. to 11 P.M., in accordance with Rule 8, which provides that the second shift shall immediately follow the first shift (or may begin so as to terminate at the beginning of the first shift).

On Bulletin No. 4 dated February 20, 1961, the Carrier advertised a signal maintenance position at the Silvis Hump Yard, tour of duty 8 A.M. to

CARRIER'S STATEMENT OF FACTS: 1. There is an Agreement in effect between the Chicago, Rock Island and Pacific Railroad Company and the Brotherhood of Railroad Signalmen of America bearing effective date of July 1, 1952. A copy of this Agreement is on file with your Board and by reference is made a part of this submission.

2. Quoted here is that portion of Article V, 1(c) of the August 21, 1954 Agreement between the Carriers' Conference Committees and the employees represented by the Employees' National Conference Committee, which reads:

"All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board * *"

3. The decision of the highest designated officer declining this claim is dated July 31, 1961, and is attached as Carrier's Exhibit A.

4. A letter from the General Chairman to the Vice President-Personnel, dated December 20, 1961, is attached as Carrier's Exhibit B, and particular attention is directed to the last paragraph of that letter reading:

"Inasmuch as 5 months of my time limit for progressing to the National Railroad Adjustment Board have already been used, this claim is being forwarded to President Clark for handling to a conclusion."

5. The letter of intent to file an ex parte submission with your Board is dated July 30, 1962 and is attached as Carrier's Exhibit C.

6. Facts 3 and 5 show proceedings were not instituted before this Board by the Organization until 12 months "from the date of said officer's decision" and was not within the 9 months period provided by the rule quoted in Fact No. 2. There was no agreement to extend the time limit.

7. The Vice President-Personnel wrote the General Chairman on October 1, 1962, advising that the claim was barred under the time limit rule and the claim should be withdrawn from the Board. Carrier's Exhibit D.

8. The General Chairman replied on October 3, 1962, declining to withdraw same from the Board. Carrier's Exhibit E.

9. The Vice President-Personnel again wrote the General Chairman on October 11, 1962, again stating the claim was barred and should be withdrawn from the Board. Carrier's Exhibit F.

10. In conference October 22, 1962, the General Chairman advised he was not going to withdraw the case.

11. The positions here involved are two Signal Maintainer positions, one having rest days Saturday and Sunday and the other having rest days Thursday and Friday. Both positions are on the first shift at the Silvis, Illinois Classification Yard. (Exhibits not reproduced)

OPINION OF BOARD: The Carrier first raises a procedural argument, charging that the claims herein are barred as a result of untimely submission. We have examined the record, and fail to find any substantial evidence which would tend to prove a procedural defect in the presentation of these claims to the Board. Therefore, we shall decide the case on the merits.

It is our opinion that claims A, C, D, E and F must be denied on the basis of Award 13866, a case which involved these same parties and the same subject matter.

Claim B alleges a violation of Rule 4 which reads:

"RULE 4. LEADING SIGNAL MAINTAINER: A signal maintainer working with and/or supervising the work of not to exceed seven (7) employes on a maintainer's territory, with or without plants thereon, shall be classified as a leading signal maintainer."

The Organization asserts that Claimant Ward is actually the initial First Trick Maintainer, and he is entitled to be paid at the Leading Signal Maintainer's rate.

The Carrier argues that these two men were doing the same work and therefore one of them should not be designated as Leading Signal Maintainer. We believe that this situation falls within the language of Rule 4, and we therefore hold that to fail to designate and compensate Ward accordingly, is an error.

The Carrier then raises the question of burden of proof. We hold that the Organization made a prima facie case on this point on the property. The claim was not denied or refuted, and therefore the Organization was not required to further substantiate its position. Had the Carrier challenged the assertions of the Organization we might have required more evidence in order to establish the preponderance in determining the burden of proof question. But since the matter was not refuted, we hold that the Organization, through its prima facie case, met the burden of proof required by this Board.

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 violated.

AWARD

Claim A—denied.
Claim B—sustained.
Claim C—denied.
Claim D—denied.
Claim E—denied.
Claim F—denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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

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