

Award No. 15515
Docket No. SG-14936

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Claude S. Woody, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie-Lackawanna Railroad Company that:

(a) Carrier has been and is continuing to violate the current Signalmen's Agreement, as amended, particularly Rule 3 and the Mediation Agreement--Case No. A-4399, when it assigns Leading Signal Maintainers to perform the duties of a Foreman of Maintainers on the Scranton Division.

(b) Carrier be required to pay Mr. F. Joyce the Foreman of Maintainer's rate of pay beginning retroactively 60 days from April 8, 1963, and continuing until the violation is corrected.

(c) Carrier be required to properly assign the work now being performed by the Leading Signal Maintainers.

[Carrier's File: Item 108]

EMPLOYES' STATEMENT OF FACTS: This dispute is a result of two things; both are directly connected and associated with the merger of the Erie Railroad Company and the Delaware, Lackawanna and Western Railroad Company. (For the sake of brevity, the companies will henceforth be called the Erie and DL&W, respectively. The Erie Lackawanna Railroad Company will be called the E-L.) Previous to the merger, until the effective date of the implementing agreement, November 1, 1962, Signal Department employees on each of the properties were governed by separate, different agreements between this Organization and those Carriers. The basic Erie Agreement was, with minor changes, retained and the DL&W Agreement was cancelled.

As stated previously, the dispute was a result of at least two things, the first of which is that Carrier has, contrary to its proposals during negotiations which resulted in the implementing agreement, refused to create, subsequent to that agreement, a position of Foreman of Maintainers to

Carrier agreed and met the conditions of the settlement with its letter of November 21, 1963. Concerning that said in your letter of November 27, 1963, regarding the application of Rule 59, our file notes show that Rule 59 was brought into the picture by you, and not Carrier representatives. Because of your concern over the difference of opinion concerning the application of the rule, it was agreed that Carrier would write you concerning your interpretation of Rule 59 providing you would withdraw the Joyce case. Our file records show that you agreed to this settlement of the two disputes and the waiver of time limitations had no bearing on this case for the reason that it was understood and agreed that the file of both parties was to be closed.

After having completely reviewed this and other cases handled during conference and conferring with Messrs. Carroll, Youngwerth and Willey, it is our considered opinion that this case should be withdrawn and closed for the reasons that it had been denied properly by the Carrier as the claim is without merit for the reason that the Leading Maintainer did not at any time direct more than four (4) employees consistent with the provisions of Rule 3. This leader on former 'L' territory performs work on one section at a time, and there are days and weeks at a time when he does not come in contact with other than the one or two employees of the first trick of the particular section on which working, and may not come in contact with second and third shift men for months at a time. During negotiations of the November 1, 1962 Memorandum of Agreement adopting the former Erie rules agreement except as revised, it was distinctly understood that the conditions of Rule 3 would not be applicable to the 'L' side except that all members of such sections would not be assembled, and bunching would be limited to four (4) employees. The position you are taking in the Joyce case is not consistent with the language or intent of the Agreement.

In view of the fact that Carrier has fully met its commitments during conference, it is my considered opinion that you should do the same. Please advise.

Yours very truly,

/s/ F. Diegtel"

On December 30, 1963, General Chairman Wilson replied as indicated in Carrier's Exhibit J.

As a result of the parties being unable to handle this dispute to a successful conclusion on the property, the Organization has now advanced same to this Division for adjudication.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization alleges that the Claimant, Leading Signal Maintainer, performed the duties of a Foreman of Maintainers and urges this Board to require the Carrier to "properly assign" the work and pay the Claimant the Foreman's rate of pay for the period of the violation.

The applicable Agreement provides:

"Rule 3. An employe assigned to work with and direct the work of other employes specified herein shall be classified as a leading signalman or leading signal maintainer. However, the number of employes so directed shall not exceed four (4) at any time."
(Emphasis ours.)

The facts indicate that the Claimant was assigned to the Mattes Street section where he worked with and directed one Signal Maintainer. As a Leading Maintainer he periodically performed and directed relay, mechanical and megger test work on the aforementioned section and two others, viz. Gang 20 and Gang 29. When on the territory of Gang 20, he worked with and directed two men, and when on the territory of Gang 29, he worked with and directed two men. He signed the payroll sheets for all men with whom he worked. There is some evidence that the Claimant worked with and directed as many as seven men during the winter months, but this fact, if disputed, would be unimportant, since there is no proof that he, at any time, worked with and directed the work of more than four men simultaneously, unless the signing of the time sheets be construed as tantamount to "working with and directing the work of" Claimant's men.

In Awards 12833 and 14835, we held that the keeping of work records does not constitute supervision of the employes whose records are kept.

In Award 13057, Referee Engelstein prepared an opinion for this Board, interpreting and applying a rule substantially identical to the rule above cited, wherein we held:

"The rule limits a Leading Maintainer to working with and supervising no more than five employes at any one time. The phrase 'at any one time' leads us to conclude that he may work with and supervise a succession of different groups up to five men in each group as the needs of the Carrier demand. Thus, Carrier may use a Leading Maintainer to supervise a group of men, relieve him of this responsibility of these men, and ask him to supervise and work with another group."

There is no distinction between the phrases "at any one time" and "at any time." Both indicate that the men are to be supervised simultaneously.

Upon consideration of the entire record, we conclude that the alleged violation has not been proved, and the claim will be denied.

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 of the parties was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1967.