Award No. 16024
Docket No. SG-15958

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Central of Georgia Railway Company that:

(a) Mr. A. T. Jones, Assistant Signalman, be paid as Signal Maintainer for eight (8) hours on each of the assigned working days — June 15 through July 24, 1964 — less the amount paid him during the dates involved, when not permitted to fill the vacancy of Signal Maintainer at Macon Junction Interlocking during absence of R. F. Stanfield, when one of the two assigned positions at Macon Junction Interlocking was left unfilled — in violation of the Memorandum of Understanding which requires that two shifts be worked five days per week and one shift filled on Saturday and Sunday of each week. Claim to include eight (8) hours' overtime for each Saturday and Sunday, on alternate weekends during the period involved, in line with the assignment on position left unfilled.

(b) Mr. A. T. Jones, Assistant Signalman, be paid at the rate of Signal Maintainer for eight (8) hours on each of the regular assigned working days — August 3 through 21, 1964 — when he was not permitted to perform vacation period of J. D. Colquitt — which vacation relief work was performed by E. E. Murdock, assigned second shift Signal Maintainer at Macon Junction Interlocking — in violation of the Supplemental Agreement of June 1, 1955.

Claim to continue from August 3, 1964, until correction is made, or until return of Mr. Colquitt from his vacation (whichever is sooner) less amount paid to Mr. Jones during the period involved.

(c) Mr. E. E. Murdock, assigned Second Trick Signal Maintainer, Macon Junction Interlocking, be paid at his respective rate of pay for eight (8) hours on each of the dates August 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20 and 21, 1964, when not permitted to work his regular bulletin assignment as Second Shift Signal Maintainer at Macon Junction Interlocking, and required to perform vacation relief work at

General Chairman. Following the conference, Director of Personnel Tolleson wrote General Chairman Melton on April 30, 1965, as per photo copy attached as Carrier's Exhibit No. 4.

The next communication of record is the letter written by President Jesse Clark of the Brotherhood, dated September 22, 1965, addressed to Mr. S. H. Schulty, Executive Secretary, Third Division, National Railroad Adjustment Board, of the Brotherhood's intent to file an ex parte submission thirty days hence.

The Brotherhood has failed in all handlings on the property to prove their claim or to cite any rule, interpretations or practice which supports their claim. They have failed to show that Claimant A. T. Jones was qualified for the work he allegedly was deprived of performing, or that he was available during period August 3–21, 1964. Not knowing of any rule, interpretation or practice that has been violated in any manner whatsoever, the Carrier has denied this baseless claim in its entirety at each and every stage of handling on the property. The claim has absolutely no semblance of merit.

The rules and working conditions agreement between the parties is effective July 1, 1950, as amended. Copies are on file with your Board, and the agreement, as amended, is hereby made a part of this dispute as though reproduced herein word for word.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Murdock was the Second Shift Signal Maintainer at Macon Junction Interlocking; Claimant Jones was an Assistant Signalman. While the First Shift Signal Maintainer at Macon Junction Interlocking was off sick, Murdock was assigned to his position from June 16, 1964 through July 24, 1964; the second shift position was blanked during this period, except for alternate weekends, when Murdock worked it. For fifteen work days between August 3 and 21, 1964, Murdock was assigned to vacation relief on the Signal Maintainer position at Payne, Georgia; during that period his second shift position at Macon Junction Interlocking was blanked. During this period Jones was assigned to vacation relief on the Signal Maintainer position at Alexander City, Alabama.

It is Brotherhood's contention that under the terms of the Memorandum of Understanding signed by the parties and dated July 1, 1950, Carrier did not have the right to blank the Second Shift Signal Maintainer position during either of the above periods. Carrier argues that the Memorandum relates to division of overtime between the first and second shift Signal Maintainers at Macon Junction Interlocking, and does not forbid the blanking of either position. Carrier further argues that there was no employe other than Murdock available and qualified to fill the First Shift position while the regular incumbent was off sick; and that Jones was not qualified and did not want to fill any Signal Maintainer position, therefore could not fill the second shift position vacated by Murdock while Murdock relieved on the first shift.

The July 1, 1950 Memorandum says:

"It is agreed that to take care of the special condition at Macon Junction interlocking the following **shall prevail:**

Monday through Friday a first and second shift will be employed. Only one shift will be needed on Saturday and Sunday.

No relief man will be employed, but the present practice of dividing the overtime work will be continued. The man working Saturday and Sunday will cover all calls until his quitting time on the following Friday. All time worked on Saturday, Sunday or Holiday will be at the overtime rate. The time the second trick maintainer works on a Saturday, Sunday or Holiday may be the hours of the first trick." (Emphasis ours.)

Carrier failed to prove that the Memorandum was not intended to mean what it says, and failed to prove any circumstances warranting permitting an exception to carrying out its directives. We therefore agree with the contention of Brotherhood that Carrier violated the agreement contained in the Memorandum when during both periods it blanked the Second Shift Signal Maintainer position at Macon Junction Interlocking.

Brotherhood argues that during the period in August referred to above, Carrier violated both the Memorandum and the Supplementary Agreement which specified which employes will perform vacation relief work. The appropriate portion of the Supplementary Agreement reads:

"Effective June 1, 1955, vacation relief work **will be performed** by Assistant Signalman or Helper in the gang, or furloughed man if there is no gang working. The senior qualified man applying will be given preference for this work. . . ." (Emphasis ours.)

Carrier argues that Murdock applied for and Jones did not apply for the Payne relief assignment. Brotherhood answers by pointing out that the quoted section does not apply to Murdock because he was not an Assistant Signalman, or Helper or a furloughed man, while Jones as an Assistant Signalman, was covered by the first sentence quoted above, which makes no reference to "applying." In this connection we have been referred to our Award 10501 (Hall) between the same parties as here; the issue involved in Award 10501 was whether, for purposes of determining expenses to be allowed, work performed by a Claimant should be classified under Rule 28 of the Agreement of July 1, 1950, or under the Supplemental Agreement of June 1, 1955; it was thus distinguishable from the case here involved and is not dispositive of the issue now before us.

We were also referred to our recent Awards 15991 and 15992 (Zumas) which involved the same parties and concerned the Second Shift Signal Maintainer position at Macon Junction Interlocking. Both cases are, however, distinguishable from the case now before us: In the case involved in Award 15991 Brotherhood had claimed a violation of the July 1, 1950 Memorandum of Understanding because, Brotherhood alleged, Carrier had blanked the Second Shift Signal Maintainer position at Macon Junction Interlocking; we found that Brotherhood had failed to prove that the position had been blanked, and we denied the claim. In the case involved in Award 15992 Brotherhood claimed violation of the Agreement, particularly the July 1, 1950 Memorandum of Understanding and the Supplemental Agreement of June 1, 1955, because, it alleged, Carrier failed and refused to fill the vacancy in the position of Second Shift Signal Maintainer at Macon Junction Interlocking while the incumbent was on vacation; there we found that the Memorandum of Understanding

did not require that the Second Shift Signal Maintainer position involved be filled by a relief worker in the circumstance that the regular incumbent was on vacation, and we denied the claim. The circumstances in the current case are clearly different: the vacancy in the Second Shift Signal Maintainer position at Macon Junction Interlocking here did not result from the absence of the incumbent to take his vacation.

Carrier presented no evidence beyond its repeated assertions that Jones was not qualified to and did not want to fill any Signal Maintainer position. On the other hand, there is undisputed evidence in the record that Carrier on other occasions had assigned Jones to work as a Signal Maintainer — including during the period in August involved in this case. Thus we cannot find from this record that Jones was either unqualified or unavailable.

Based on the foregoing, it is our opinion that under the Supplemental Agreement of June 1, 1955, Claimant Jones should have been assigned the involved vacation relief work at Payne; and that Carrier also violated the Agreement including the Memorandum of Understanding of July 1, 1950, and the Supplemental Agreement of June 1, 1955, in assigning Claimant Murdock, even if at his own request, as stated by Carrier, to the involved vacation relief work at Payne and in not working him on, but blanking, his Second Shift Signal Maintainer position at Macon Junction Interlocking.

Carrier also argues that neither Murdock nor Jones suffered any loss as a result of the actions complained of, and that there is no provision in the Agreement between the parties for penalties. We have frequently dealt with this argument; to cite but a few, we said in Award 10033:

> ". . . This division and others has continued to characterize awards in such cases as a penalty. The fact is that we are dealing with nothing more than a Contract violation and an award of damages for such breach . . . ,"

and in Award 10575:

> "The essence of the claim by the Organization is for violation of Rules of the parties' Agreement. The claim for the penalty on behalf of the individual claimant named is merely an incident thereto."

and in Award 10577:

> "Carrier also contends that the claim should be disallowed because the action of the Carrier in transferring said work did not affect the pay of the Claimants and they suffered no wage loss. This claim is to enforce the seniority Rules of said Agreement and not for work performed."

We will adhere to such reasoning in this case.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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

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