

Award No. 16276

Docket No. SG-16792

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

NORFOLK AND WESTERN RAILWAY COMPANY
(Formerly Wabash Railroad Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Western Region of the Norfolk and Western Railway Company (former Wabash Railroad Company):

On behalf of Mr. J. G. Shadrick, Signalman in Decatur Signal Shop, for one hour's pay for each of the following days account Acting Signal Shop Foreman B. E. Bills performing work that was supposed to be performed by Signalmen:

September 17, 21, 22, 23, 27, 28, 29

October 1, 4, 5, 6, 7, 8, 13, 14, 15, 19, 20, 21, 25, 26, 27, 29

November 1, 2, 3, 4, 5, 8, 9, 10, and 15, 1965.

[Carrier's File: 116.5]

EMPLOYEES' STATEMENT OF FACTS: This dispute arose because Carrier required and/or permitted the Acting Signal Shop Foreman to handle signal material in connection with its movement in, around and/or out of the shop. We contend such work accrues to the men in the shop, and not to the Foreman. As indicated by our Statement of Claim, we are asking that a Signalman be paid for one hour each day the Foreman performed the work in dispute.

The instant claim, initiated November 15, 1965, by the Claimant, Signalman J. G. Shadrick, 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. Pertinent exchange of correspondence on the property is attached hereto as Brotherhood's Exhibit Nos. 1 through 9.

As indicated in the attached exhibits, the Carrier questioned the performance of the disputed work by the Acting Foreman, and also asserted the work required only 15 minutes a day. In his letter of September 24, 1966 (Brotherhood's Exhibit No. 9), the General Chairman referred to "addi-

Also, the foreman when instructing new employees in the Signal Shop or when teaching signalmen employed in that shop new procedures in assembling signal apparatus, may do so by actually assembling the apparatus with the signalmen watching.

The following claim was presented by Signalman Shadrick in joint letter addressed to Decatur Division Engineer D. J. Lewis, to former Regional Engineer Signals and Communications L. B. Yarbrough, and to General Chairman J. F. Poundstone of the Brotherhood of Railroad Signalmen, dated November 15, 1965:

"I am making a claim against the Western Region of the Norfolk and Western Railway Co. for one hour at straight time for each day of the following dates. Sept. 17, 21, 22, 23, 27, 28, 29 and Oct. 1, 4, 5, 6, 7, 8, 13, 14, 15, 19, 20, 21, 25, 26, 27, 29 and Nov. 1, 2, 3, 4, 5, 8, 9, 10, 15 at rate of \$293.28.

This time is for signal foreman doing regular work that is signalman's work of shipping and receiving of material used in signal work."

No records are kept as to when material is received in the Signal Shop. What records are kept indicate that no material was shipped from the Signal Shop on

September 17, 21, 23 and 29, 1965;
October 1, 7, 8, 13, 14, 15, 26, 27 and 29, 1965; and
November 3, 8, 9, 10 and 15, 1965.

A copy of the exchange of correspondence between the representatives of the parties in connection with the alleged dispute described in the Employees' ex parte Statement of Claim is attached hereto and made a part hereof, marked Carrier's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: During the period from mid-September through mid-November, 1965, B. E. Bills served as Acting Signal Shop Foreman at Decatur. During this period Bills did some of the shipping and receiving of materials used in signal work. The claim filed by Signalman Shadrick seeks compensation at the rate of one hour per day for the regular performance of signalman's shipping and receiving work on each day listed in the claim.

The Employees assert that the average of one hour work performed by Bills daily was signalman's work under the terms of the parties' Agreement, that it was performed by the foreman with regularity on 73% of the days he served as Acting Foreman, that this is prohibited by Rule 1 (b), and that the Claimant is thus entitled to the compensation sought.

The Carrier denies liability on the grounds that the foreman is entitled to perform work in the shop under Rule 1(b); that the performance of an estimated 15 minutes' work, primarily receiving and shipping, was not done on every day the Acting Foreman worked, nor when the regular foreman was present, and, therefore, cannot be construed as regular work. In addition, even if this were construed to be regularly performed, the Carrier points

out that the foreman was not required to do this and that, therefore, his actions were not prohibited by Rule 1(b).

The individual who performed the disputed work giving rise to this grievance was working as an Acting Foreman, and not in his regular capacity. There is no evidence that he was required to do these tasks, or, indeed, that they were regularly performed by the individual usually holding that position. In addition, the evidence is clear that even the Acting Foreman did not perform the disputed tasks each day during his time on the job. Even the type of work when done varied daily including receiving and/or shipping.

It is clear that the parties' Agreement does not restrict the instant work to Signalmen, and that the foreman may do such work if not required to be performed regularly. Accordingly, we must find that the tasks performed by the Acting Signal Shop Foreman were not performed with sufficient regularity to justify sustaining the claim in this case.

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 Agreement 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 2nd day of May 1968.