Award No. 16306
Docket No. SG-15761

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, 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. R. L. Stewart, Leading Signalman, be compensated at his hourly rate of pay for eight (8) hours each day of his work week assignment, August 31 through September 11, 1964, for all work days he was not permitted to work his regular assignment of Leading Signalman in the gang, in addition to what he was paid on the vacation relief assignment during the period involved, or until a correction is made to permit Mr. Stewart to work his regular assignment in the gang as Leading Signalman.

(b) The Supplemental Agreement of June 1, 1955, is being violated and should be corrected. (Carrier's File: SIG 483.)

EMPLOYES' STATEMENT OF FACTS: The dispute arose when from August 31 to September 11, 1964, Carrier required Leading Signalman R. L. Stewart, against his wishes, to suspend work on his regular job in the Construction Gang and perform vacation relief work at Opelika, Alabama, as a Signal Maintainer. During this time Leading Signalman Stewart performed no work on his regular assignment; he worked exclusively as the Signal Maintainer at Opelika.

The Agreement provides, and we will show it has been the practice, that vacation relief work is performed on this property by Assistant Signalmen or Helpers in the gang, or by furloughed men if there is no gang working.

On September 1, upon first being assigned to perform the vacation relief work at Opelika, Leading Signalman Stewart wrote a letter to Assistant Superintendent of Signals V. L. Cosey in which he stated he did not want to be assigned to vacation relief work. His letter is Brotherhood's Exhibit No. 1.

Inasmuch as Mr. Stewart was neither an Assistant Signalman, Helper, or furloughed employe and he was required to suspend work on his own assignment, against his expressed wishes, and perform the vacation relief work which rightfully belonged to other classes of employes, claim on his behalf

The next communication of record is the letter of September 22, 1965, from Mr. Jesse Clark, President, Brotherhood of Railroad Signalmen, to Mr. S. H. Schulty, Executive Secretary to the Third Division, National Railroad Adjustment Board, of the Brotherhood's intent to file and ex parte submission concerning this matter.

The Brotherhood has failed in all handlings on the property to cite any violation whatsoever of the schedule agreement, dated July 1, 1950, as amended. Not knowing of any rule, interpretation or practice that has been violated, the Carrier has denied this baseless claim for penalty pay in its entirety in all handlings on the property. **There is no penalty pay rule in the agreement.**

OPINION OF BOARD: Claimant was regularly assigned as Leading Signalman in Carrier Construction Gang with headquarters in camp cars. The Signal Maintainer with headquarters at Opelika, Alabama went on annual vacation from Monday, August 31, 1964 through Friday September 11, 1964. Under protest, Claimant was assigned to relieve the signal maintainer position at Opelika while the incumbent was on vacation. He worked the regularly assigned hours of that position which were the same as his own, and was paid his actual expenses and higher rate of pay as Leading Signalman for the entire period.

Petitioner contends that Carrier violated Rules 15 and 38(h) of the Rules Agreement, as amended by the Supplemental Agreement between the parties effective June 1, 1955. The gravamen of Petitioner's position is that vacation relief work on this property must be performed by Assistant Signalmen or Helpers in the particular gang or by furloughed men if there is no gang working, and that Carrier had no authority to order Claimant to suspend work on his regular job in the Construction Gang for the purpose of performing vacation relief work at Opelika, Alabama.

In the first instance, Carrier avers that the claim is defective because Rule 15 of the Agreement was not at issue while the dispute was considered on the property. Since this contention was not made in the handling on the property, it cannot now be considered and must be dismissed. Awards 15640, 15572, 13946 and others.

As to the merits of the dispute, Carrier contends that the disputed vacation relief work was offered to signal employes in accordance with the Supplemental Agreement of June 1, 1955, and that no applications were received for this work. Furthermore, Carrier avers that there were no Assistant Signalmen or Helpers in the gang qualified to perform the vacation relief work, and that no furloughed employes were available. The record further reveals that one Assistant Signalman, who might have relieved the incumbent, was unavailable as he was relieving another Signal Maintainer elsewhere on the dates of claim.

The pertinent language of the Supplemental Agreement of June 1, 1955 provides as follows:

> "Effective June 1, 1955, vacation relief work will be performed by Assistant Signalman or Helper in the gang, or furloughed men if there is no gang working. The Senior qualified man applying will be given preference for this work."

Petitioner construes said provision to mean that Carrier has no authority to use regularly assigned employes for vacation relief work if they do not apply for such work, even though neither qualified Assistant Signalman or Helpers in the gang are available nor furloughed employe available to perform such vacation relief work.

We have considered prior awards of the Division concerning the proper application of Rule 38(h) of the Agreement as amended by the Supplemental Agreement of 1955, as well as Rules 21, 23, 24, 28 and 40, which Carrier contends are also relevant in this dispute. The Supplemental Agreement clearly provides who will perform the vacation relief work if available, but contains no provision applicable in the instant case where no qualified employes in the specified positions were available on the dates of claim. Awards 15872 and 15992. Although the June 1, 1955 Supplemental Agreement came into play, Carrier was unable to fill the vacation relief assignment under its provisions. Consequently, Claimant was required to leave his regular assignment to fill the vacation relief assignment for which he was paid travel expenses as well as the higher rate of pay for his regular position. Careful analysis of the relevant Rules contained in the Agreement discloses implied authority for the disputed assignment in the absence of further obligations on the part of Carrier under the Supplemental Agreement of June 1, 1955. Awards 7601, 12342, 14394, and 15872.

Accordingly, the claim must be denied.

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 the Agreement was not violated.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1968.

DISSENT TO AWARD 16306, DOCKET SG-15761

The Majority properly dismissed the new issue injected by the Carrier when the dispute came to the Board; however, the Majority erred in limiting the application of Rule 38(h) as revised by the June 1, 1955 Supplemental Agreement (quoted in Opinion) to those instances where employes are available. Patently, the word "available" does not appear in the rule. If availability was deemed essential or even desirable, the Carrier should have seen to it that it was included during negotiations. It has been universally held from the beginning that it is the duty of this Board to interpret the rules of the Agreement as they are met. We are not authorized to read into a rule, that which is not contained therein, or by an award add to or detract from the clear and unambiguous provisions thereof.

In this Award the Majority has gone beyond its authority; therefore, I dissent.

G. Orndorff
Labor Member

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