



Award No. 16690
Docket No. SG-16853

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

UNION RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Union Railroad Company:

On behalf of George Petkus for the difference between the Signalman and Assistant Foreman rates of pay for five (5) days during the week of December 20, 1965.

EMPLOYES' STATEMENT OF FACTS: This claim is based on our contention Claimant Petkus performed the duties of an Assistant Foreman while the latter was on vacation during the week of December 20, 1965, and that he should be paid the Assistant Foreman rate of pay for such work.

During the week of December 13, 1965, the Assistant Foreman and Claimant Petkus worked together on the installation of the electrically controlled derail system at the north end of the Classification Yard.

On Friday, December 17, 1965, the last day of work prior to the Assistant Foreman's vacation period, the Assistant Foreman presented to Mr. Petkus all of the paper work and information necessary for this particular job.

On December 20, 1965, Mr. Petkus, along with another Signalman, was detailed to this job. During the entire week he performed the duties of the Assistant Foreman but was only paid the Signalman rate of pay.

On December 27, 1965, the Assistant Foreman returned from vacation. Both he and Mr. Petkus returned to work on this particular job in their own capacities.

Under date of January 29, 1966, the Brotherhood's General Chairman presented a claim on behalf of Mr. Petkus for the difference between the Signalman and Assistant Foreman rate of pay for five days (40 hours). The claim was subsequently 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

On April 6, 1966, this grievance was appealed to the office of the Vice President and General Manager. This is attached hereto as Carrier's Exhibit B.

In a letter dated June 1, 1966, the above grievance was declined by the Office of the Assistant to Vice President and General Manager. This letter is submitted as Carrier's Exhibit C. The Office of the Assistant to Vice President and General Manager is the highest office on this property designated to handle labor matters.

On June 22, 1966, the Office of the Vice President and General Manager was in receipt of a letter from General Chairman George Petkus, advising that the above grievance was being progressed to the Grand Lodge representative, Mr. C. K. Fields, for further handling. This letter is attached as Carrier's Exhibit D.

Under date of October 5, 1966, the Carrier received a sworn affidavit submitted by Mr. George Petkus concerning the grievance in question. This affidavit is attached as Carrier's Exhibit E.

As the Carrier understands the employees' claim, they are contending that while the Assistant Foreman was on vacation the week of December 20, 1965, Mr. Petkus, a signalman, performed the duties of an Assistant Foreman's position.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue involved herein is whether or not Claimant was designated to fill the assignment of Carrier's Assistant Foreman, while the latter was on vacation, and if so, was therefore entitled to Assistant Foreman's rate of pay while performing said work.

Claimant and Assistant Foreman Gallagher during the week of December 13, 1965 worked together on the installation of the electrically controlled derail system at the north end of the Classification Yard. Prior to leaving on vacation, the Assistant Foreman gave Claimant all of the paper work and information in connection with the job. The following week beginning December 20, 1965, Claimant and another signalman continued the work commenced the previous week by Claimant and the Assistant Foreman, which consisted of digging trench, laying cable and wiring switch machines. The General Foreman, Mr. Brown, spent 15 minutes on the job during the week of December 20, 1965, according to the affidavit filed by Claimant herein. Upon the Assistant Foreman's return to work the following week, the job was completed by said Assistant Foreman and Claimant.

The Organization contends that the Carrier made a "de facto" designation of Claimant to perform the same work as the Assistant Foreman; that Claimant did perform the same duties of the Assistant Foreman while the latter was on vacation; that the Assistant Foreman gave Claimant the circuits and also gave him the Assistant Foreman's orders.

In support of its position, the Claimant made the following affidavit:

"AFFIDAVIT

Affidavit – Form No. 169-S

State of Pennsylvania,)
) ss:
County of Allegheny)

On this Third day of October, A. D. 1966 personally appeared before me James L. Miles, 224 McGinnis Avenue, Pitcairn, Pennsylvania 15140 in and for the aforesaid County and State and duly authorized to administer oaths, George Petkus, 321 Second Street, Pitcairn, Pennsylvania who, being duly sworn according to law, doth depose and say that Mr. Martin shows my time reports but fails to show the reports of Assistant Foreman prior to the week in question. They would be about the same. Our time reports don't describe our work in detail. As for general supervisor, Mr. Brown exercised more supervision when the regular Assistant Foreman was present, and only showed up for 15 minutes during the week I was on the job. If there wasn't any supervision on the job, I would like to know how the job was completed and tested. (Attached letter.)

/s/ George Petkus

Sworn to and subscribed before me, this 3rd day of October, A.D. 1966.

/s/ James L. Miles

My Commission expires January 1972.

[SEAL]

(L E T T E R)

The Assistant Foreman handed me the circuits and said you'll be on this job while I'm on vacation. His orders are handed to him also. Because I did the same work as the Assistant Foreman would have done if he was on the job, I consider this a violation of Rule 14. I'm asking the Carrier to reconsider its decision.

/s/ George Petkus"

The Carrier's position is that Claimant was not "designated" to fill the assignment of the vacationing Assistant Foreman as is required by Rule 10 (a) of the Agreement; that Claimant did the same work that was done the week before with the Assistant Foreman; that Claimant did not perform the duties of the Assistant Foreman's position while the latter was on vacation; that Carrier is not required to fill the vacant Assistant Foreman's position.

The Assistant Foreman, R. S. Gallagher, made the following statement (Carrier's Exhibit G):

"October 18, 1966

TO WHOM IT MAY CONCERN:

Prior to my going on vacation I showed George Petkus what had to be done on the job. I also gave him the plans of the junction boxes that I had drawn up for the job. I felt that he may be working on this particular job under Brown's supervision during my vacation. I gave him the same instructions that I would a helper or assistant signalman if they had been assigned to the job.

I had all the work laid out and plans made for completion of the job before I went on vacation.

/s/ R. S. Gallagher
R. S. Gallagher"

If we are to sustain this claim, we must find that the instructions given Claimant, the brief supervision of the job by Carrier's General Foreman, and the placing of another signalman on the job to help Claimant, all amount to a "de facto" designation of Claimant to fill the vacant Assistant Foreman's position during the week in question.

The record is lacking in evidence that Claimant was instructed to perform the supervisory duties of the Assistant Foreman's position. We cannot infer that inasmuch as another signalman was assigned by Carrier to assist Claimant, that Claimant supervised him at the behest of Carrier. Neither can we conclude that the giving of the plans and instructions in regard to the job amounted to a "de facto" designation of Claimant to fill the Assistant Foreman's position in this instance.

As was said in Award 4992 (Carter):

"The Organization asserts, however, that supervisory duties of the foreman's position were performed by Claimant after he displaced one of the occupants of a clerical position in the freight house. There is no evidence that he was instructed to perform supervisory duties by bulletin, oral direction, or otherwise. Carrier states that any such work performed by Claimant was not by direction of the Carrier. An employe may not voluntarily perform supervisory service without authority and subsequently assert such service in support of a claim."

Therefore, inasmuch as Claimant was not "designated" by Carrier to fill the Assistant Foreman's position, we must deny this claim.

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 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 28th day of October 1968.

DISSENT TO AWARD NO. 16690, DOCKET SG-16853

We cannot accept the Majority's holding that the evidence of record was not sufficient to establish this claim. Award No. 16690 is in error, and we therefore dissent.

W. W. Altus, Jr.
For Labor Members

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