



Award Number 17488

Docket Number SG-16282

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

G. Dan Rambo, 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 that:

Carrier be required to compensate Robert R. Woodside the difference between Signalman and Leading Signalman rates of pay for sixteen (16) hours account making adjustments to car retarders on March 23 and 24, 1965.

**EMPLOYERS' STATEMENT OF FACTS:** Claimant Woodside is the incumbent of a Signalman position. On March 23 and 24, 1965, he was assigned to make adjustments to car retarders.

Under date of April 10, 1965, the General Chairman filed a claim on behalf of Mr. Woodside for the difference between the Signalman and Leading Signalman rates of pay for those two days on the basis it has always been a practice for such work to be performed by an employee classified as a Leading Signalman and paid the Leading Signalman rate of pay.

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. Correspondence exchanged on the property is attached hereto as Brotherhood's Exhibit Nos. 1 through 5.

There is an agreement in effect between the parties to this dispute, bearing an effective date of October 1, 1950 (Reprinted December 1, 1965), as amended, which is by reference made a part of the record in this dispute.

(Exhibits Not Reproduced)

**CARRIER'S STATEMENT OF FACTS:** Under date of April 10, 1965, a grievance reading as follows was submitted by General Chairman George Petkus:

"Please consider this letter as constituting a grievance and time claim based on the reasons outlined below:

"Before the consolidation of Signal Forces the maintenance of Signal equipment at the Mon Southern Car Retarders was always performed by a man holding the position of Leading Signalman and paid for these duties at the Leading Signalman rate of pay.

On July 1, 1965, this grievance was appealed to the office of the Vice President and General Manager by letter dated July 1, 1965 and is attached hereto as Carrier's Exhibit "C".

In a letter dated September 10, 1965, 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 "D".

On September 23, 1965, 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 progressed to the Grand Lodge representative, Mr. C. K. Fields, for further handling.

(The office of the Assistant to Vice President and General Manager is the highest office on this property designated to handle labor matters. Correspondence from the employees was addressed in error to the Vice President and General Manager's office.)

As the Carrier understands the employees' grievance, they are contending that the agreement was violated because Signalman Woodside performed work at the car retarder that allegedly belongs to leading signalmen to the exclusion of all others.

Leading signalmen do not and have not had the exclusive right to perform the work in question. Attached as Carrier's Exhibits "E", "E-1", "E-2" are statements from members of Carrier's Signal Department supervision attesting to this fact. (In Mr. Freidhof's statement he makes reference to being employed by the Union Railroad on October 1, 1940 and also being promoted to Signalman on October 1, 1940. For clarification purposes, what actually took place was that Mr. Freidhof was employed as a Signalman on October 1, 1940.)

(Exhibits Not Reproduced)

**OPINION OF BOARD:** Claimant, a Signalman, was on March 23 and 24, 1965 assigned to make adjustments to car retarders in Carrier's classification yard. Employees urge that this is work belonging to the Leading Signalman classification and cite certain rules of the Agreement as well as past practice in support of their claim that Claimant should be paid at the higher Leading Signalman's rate for those hours so employed.

Carrier responds that Rule No. 1, Scope Rule, only recognizes that such work is Signal Department work and does not limit or reserve any particular work to any classification; further, that Rule No. 10, Classification, does not provide exclusive grants of work to each classification. This Board is in agreement.

Thus, to show that Rule No. 13, Advertising Positions, has been broken and the Agreement violated it becomes the burden of the Organization to show by past practice that the work of adjusting car retarders has been exclusive to Leading Signalmen. This has not been done.

One party alleges Claimant's work was supervised and the other party denies that it was. One party alleges "the incontrovertible fact that this job has always in the past been performed by Leading Signalmen" and the other denies that the work belongs exclusively to that classification. Certain bulletins and notices are offered as exhibits but these fail to speak directly to

the issue of past practice. In short, the record fails in burden of proof through competent evidence that the work done by Claimant has always in the past been performed by Leading Signalmen to the exclusion of all others.

**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.

#### A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1969.

#### Dissent to Award 17488, Docket SG-16282

The primary error in this Award is summed up in that part of the last paragraph of the Opinion of Board as follows:

"\* \* \* In short, the record fails in burden of proof through competent evidence that the work done by Claimant has always in the past been performed by Leading Signalmen to the exclusion of all others."

The truth of the matter is that the evidence presented by the Employees throughout handling on the property and never challenged by Carrier until in its Ex Parte Submission unequivocally supported the Employees in their contention that making adjustments to car retarders has always been performed by Leading Signalmen. The state of the record and the effect of Carrier's failure to timely refute the evidence presented by the Employees was well known to the majority before this Award was made, yet they nevertheless elected to ignore the facts and decide the case against the Employees on the basis of an issue that was not before the Board, viz., who has the exclusive right to perform the work which has nothing to do with who has performed it in the past.

The Award is in error and I dissent.

/s/ G. ORNDORFF  
G. Orndorff  
Labor Member