Award No. 18032
Docket No. SG-18290

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

RAILWAY EMPLOYES' DEPARTMENT A.F.L. - C.I.O. — ELECTRICAL WORKERS

CHICAGO, SOUTH SHORE AND SOUTH BEND RAILROAD

STATEMENT OF CLAIM: 1. That the Chicago, South Shore and South Bend Railroad violated the current agreement when they used a Foreman to perform Signalmen's work on June 9 and June 13, 1968.

2. That the Chicago, South Shore and South Bend Railroad be ordered to pay Signalman Raymond Kaiser an additional four (4) hours' pay at the straight-time rate of pay for each of the following dates: June 9 and June 13, 1968.

EMPLOYES' STATEMENT OF FACTS: The Chicago, South Shore and South Bend Railroad, hereinafter referred to as the Carrier employs a group of Electrical Workers classed as Signalmen, who are assigned to perform all work on signal equipment on the Carrier's property. In this group is Signalman Raymond Kaiser, hereinafter referred to as the Claimant.

On June 9, 1968, about 1:00 A. M., a flashing light signal at School Street, Michigan City, Indiana was damages as the result of an accident with an automobile and Train No. 239. On June 13, 1968, during the early evening rush hour, all trains were stopped due to a malfunction of signals between Tamarek and Sheridan, Indiana.

On both June 9 and June 13, 1968, Foreman Charles Wiseman was used to make repairs to the signal equipment.

The Carrier has the signal maintenance divided into four (4) territories. The Claimant is regularly assigned to territory #1, Signalman Smith is regularly assigned to territory #2, and Signalman Morris is assigned to territory #3.

Signalman Smith, territory #2, was on vacation June 9 and June 13, 1968. The Claimant, territory #1, and Signalman Morris, territory #3, were assigned to handle the work on territory #2 while Signalman Smith was on vacation.

The distance from the home of the Foreman to No. 1 Point is 1.3 miles, to No. 2 Point it is 4.0 miles.

(Exhibits not reproduced.)

OPINION OF BOARD: The basic facts are not in dispute. About 1:00 A. M. on Sunday, June 9, 1968 the flashing light signal at School Street, Michigan City, Indiana was damaged as a result of an accident with an antomobile and Train No. 239. In the early evening rush hours of June 13, 1968, all trains were stopped by red signals due to a malfunction of signals between Tamarek and Sheridan, Indiana. On both dates Carrier used Foreman, Charles Wiseman, to repair the signal equipment.

Employes contend that Rule 24 prohibits a foreman from performing work on signal equipment when he is not supervising signalmen. Since Mr. Wiseman was supervising no one when he made the repairs at the time of the two incidents, the Carrier violated said Rule 24 which reads as follows:

> "None but mechanics or appretices, regularly employed as such, shall do mechanic's work as per special rules of each craft.
>
> "This does not prohibit foremen in exercise of their supervisory duties to perform work."

Carrier argues that these were emergency situations and that emergency "work is performed by the first available man qualified in the electrical craft."

Assuming that these were emergency situations, did the Carrier have the right to assign the Foreman without regard to Rule 24? In view of that rule, did the Carrier exercise good judgment in assigning the Foreman to perform the work and did it act in a prudent and in a good faith manner? Upon all of the evidence in the record, we believe that the Carrier did not exercise good judgment when it called upon the Foreman to do the work, nor was the assignment made in a prudent and in a good faith manner.

Rule 24 is clear and meaningful. It is not ambiguous. Its purpose is to preserve mechanical signal work to mechanics and apprentices to the exclusion of foremen, except as the latter may perform some mechanical work when they are "supervising the work of three (3) or less men." (Letter of Agreement dated October 2, 1962). While an employer is given greater latitude of judgment in emergency situations, he cannot completely disregard specific contract rules. Certainly, the Carrier must have called Mr. Wiseman on each of the dates. There is no showing in the record that the Carrier attempted to call any of the mechanical employes, and consequently there is no evidence that none were available. There is also no showing that the Foreman lived closer to the scene of each incident, or that he alone could possibly respond more quickly to a call, or that the work could not have been performed by a signalman without the supervision of a foreman. These criteria, ignored by the Carrier, are proper and essential to the effective application of Rule 24. Lacking a showing of prudence and good faith, the assignment of the Foreman was in violation of the Agreement.

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 Carrier violated the Agreement.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1970.

CARRIER MEMBERS' DISSENT TO AWARD NO. 18032, DOCKET SG-18290

Award 18032 fails to make a positive determination of the primary issue involved in this dispute; i.e., whether or not the conditions that existed constituted an emergency. After making the "assumption" that an emergency situation did exist the Referee proceeds to outline his views of what the Carrier should do in attempting to call employes when an emergency exists, and completely ignores the consistent line of numerous prior awards that were furnished him and which hold to the contrary. In other awards authored by this Referee he has expressed the view that precedent awards should be followed. In this instance, however, he completely disregards such prior awards and treats them as if they were non-existent.

In expounding his theory of what the Carrier should do in attempting to call employes in these emergency situations the Referee states there is no showing that the Foreman lived closer to the scene of each incident or that he alone could possibly respond more quickly to a call. The Ex Parte Submission of the Carrier shows that in one instance the Foreman resided 1.3 miles from the point of trouble as opposed to the nearest Signalman living a distance of 15 miles away. In the second incident the Foreman resided 4.0 miles from the point of trouble while the nearest Signalman lived 17.5 miles away. Such information furnished by the Carrier was not disputed by Petitioner. Contrary to the statement of the Referee there is a showing in the record that the Foreman lived closer to the scene of the trouble in each incident.

Rule 24 of the Agreement here in issue is no different than many similar rules that have been before us in emergency situations. Such rules were also clear, meaningful and not ambiguous. In fact, in several of the prior awards that were furnished the Referee a rule identical to Rule 24

was involved and it was held that the Agreement was not violated when other employes were used in emergency situations.

Award 18032 is in palpable error in holding that the Carrier must waste valuable time calling and using craft employes in emergency situations even though other employes qualified to perform the work may be more readily available.

Award 18032 disposes of the dispute in question thus reducing the number of pending cases by one, but settles nothing. In fact, it unsettles matters that have long since been laid to rest and can very well have the effect of creating additional disputes — the very thing that this Board was designated to prevent.

G. C. White

R. E. Black

P. C. Carter

W. B. Jones

G. L. Naylor

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