



Award No. 18535
Docket No. SG-18667

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**SOUTHERN PACIFIC TRANSPORTATION COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company (Pacific Lines) that:

(a) The Southern Pacific Company violated the agreement between the Company and the employees of the Signal Department represented by the Brotherhood of Railroad Signalmen, effective April 1, 1947 (reprinted April 1, 1958 including revisions) and particularly Rules 27 and 70.

(b) Mr. A. L. McCullough be compensated the difference in his rate of pay as Leading Signalman and that of Leading Signal Maintainer, (the current rate of pay for Leading Signalman is \$3.3286; the current rate for Leading Signal Maintainer is \$3.3932) for October 1, 2, 3, 4, 7 and 8, 1968. (Rates quoted are those included in Statement of Claim submitted February 7, 1969. They were increased retroactively by an Agreement dated April 21, 1969.)

[Carrier's File: SIG 145-161]

EMPLOYEES' STATEMENT OF FACTS: Claimant in this dispute is A. L. McCullough, Leading Signalman with headquarters at Roseville, Calif. Mr. McCullough seeks the difference between his rate of pay and the rate of pay of Leading Signal Maintainer, Car Retarder Systems, because on the dates set out herein he was required to perform the duties of the Leading Signal Maintainer, at Jennings Yard, who was on his annual vacation.

The claim is based on provisions of Rules 27 and 70, of the current Agreement which are quoted below for ready reference:

"RULE 27.

FILLING HIGHER RATED POSITION.

When an employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate, but if required to fill temporarily the place of another employe receiving a lower rate, his rate shall not be changed."

(Carrier's Exhibit C), Petitioner's Local Chairman gave notice that the claim would be appealed.

By letter dated February 7, 1968 (Carrier's Exhibit D), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated March 28, 1969 (Carrier's Exhibit E), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is A. L. McCullough, Leading Signalman with headquarters at Roseville, California. Petitioner contends that Carrier should compensate Claimant the difference between his rate of pay and the higher rate of pay of Leading Signal Maintainer because on the dates set out in the claim, Claimant was required to perform the duties of the Leading Signal Maintainer at Jennings Yard, the latter being on vacation on the dates in question.

Carrier denies that the Claimant performed the duties of Leading Signal Maintainer while the latter was on vacation answering that when he was on vacation, under the provisions of the Vacation Agreement of December 17, 1941 as amended, Carrier exercised its prerogative by choosing not to fill such position. Carrier further states that it never required Claimant to perform the duties of Leading Signal Maintainer, and that during the period in question, Claimant performed the work of his regular assigned position of Leading Signalman, Signal Gang No. 1, and that he was compensated therefore at the applicable rate.

Petitioner bases its claim on Carrier's alleged violation of Rule 27, and 70 of the current Agreement, which read, in pertinent part:

"Rule 27. When an employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate . . .

Rule 70. An employe covered by this Agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement shall be reimbursed for such loss."

In order for us to sustain the claim, Petitioner has the burden of proving by probative evidence that Claimant was required to perform the work of the higher rated position (Leading Signal Maintainer). In other words, he must have filled this position while the incumbent was on vacation.

We are of the opinion that Claimant has failed to prove that he was filling the position of Leading Signal Maintainer. The record is devoid of any evidence from which we could conclude that Carrier required Claimant to fill the higher rated position. Claimant was performing work which was part of the duties of his position, which work he had performed previously.

Claimant has failed to sustain its burden of proof, and the claim must be denied.

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1971.