Award No. 18649
Docket No. SG-18843

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Thomas Rimer, Jr., 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:

(a) The Southern Pacific Company (Pacific Lines) violated the agreement between the Company and the Employes of the Signal Department Represented by the Brotherhood of Railroad Signalmen, Effective April 1, 1947 (Reprinted April 1, 1958, including revisions) and particularly Rule 16 which resulted in violation of Rule 70 (loss of earnings).

(b) That Messers H. J. Farr, E. J. Ramey, C. R. Vance, and R. D. Shaw be allowed fourteen and one-half hours each at their respective overtime rates for hours worked by Mr. G. Kangris, Leading Signalman, Signal Gang 5a, Merced, California, an employe not assigned to regular maintenance duties and not subject to call as provided by Rule 16 of Schedule Agreement between the hours of 5 P. M. January 26, and 7:30 A. M. January 27, 1969.

[Carrier's File: SIG 152-252]

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties to this dispute bearing an effective date of April 1, 1947 (Reprinted April 1, 1958, including revisions), Rule 16 of which is particularly pertinent to this dispute.

"RULE 16.

SUBJECT TO CALL

Employes assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and shall notify the person designated by the Management where they may be called and shall respond promptly when called. When such employes desire to leave their headquarters for a period of time in excess of three (3) hours, they shall notify the person designated by the Managment that they will be away, about when they shall return, and when possible where they may be found. Unless registered absent, regular assigned employes shall be called."

By letter dated March 21, 1969 (Carrier's Exhibit B), Carrier's Division Superintendent denied the claim. By letter dated April 24, 1969 (Carrier's Exhibit C), Petitioner's Local Chairman gave notice that claim would be appealed.

By letter dated April 30, 1969 (Carrier's Exhibit D), Petitioner's General Chairman appealed the claim to the Carrier's Assistant Manager of Personnel, and by letter dated June 18, 1969 (Carrier's Exhibit E), the latter denied the claim by stating the following:

> "The work involved in this claim, i.e., patroling and observation of track, bridges and right-of-way during night hours in a period of severe storms and flooding, is not work that is reserved exclusively to signal maintainers, to the exclusion of other classes of employes as is apparently being contended in this case, it has never been so considered historically on this property, nor is such a contention supported by agreement provisions and citations to which you refer. The claim presented is, accordingly, denied."

In addition thereto, the claim appealed in behalf of Claimant Vance was specifically denied by the following:

> "As discussed in conference, claimant C. R. Vance notified management that he would be absent and not available for call between 4:00 P. M., January 24th and 7:30 A. M., January 27, 1969, and there is therefore no proper basis for claim presented on behalf of that claimant, based on a contention that he should have been called during those hours."

By letter dated June 23, 1969 (Carrier's Exhibit F), Petitioner's General Chairman conceded the fact that the claim presented in behalf of Claimant C. R. Vance was not valid, but did not accept denial for the other three of the named claimants, stating in part therein:

> ". . . you displayed copy of notice from C. R. Vance, stating that he would not be available for call during the time covered by claim, you did not however present any evidence that Mr. Farr, Mr. Ramey or Mr. Shaw were not available for call . . ."

(Exhibits not reproduced.)

OPINION OF BOARD: The claim alleges a violation of Rule 16 of the Agreement when the Carrier assigned a leading signalman from a signal gang to inspect track, bridges and the right of way because of storm conditions. It is contended that the work was properly that of signal maintainers under the terms of the rule cited which reads:

"RULE 16.

SUBJECT TO CALL.

> Employes assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and shall notify the person designated by the Management where they may be called and shall respond promptly when called. When such employes desire to leave their headquarters for a period of time in

excess of three (3) hours, they shall notify the person designated by the Management that they will be away, about when they shall return, and when possible, where they may be found. Unless registered absent, regular assigned employes shall be called."

In his final appeal on the property, the General Chairman stated the basis for the claim as follows:

"As claimants were all employes assigned to regular maintenance duties, and subject to call, whereby Mr. Kangris was a gang employe and not assigned to maintenance duties or subject to call, claimants should have been called to perform this work, as they were not they clearly suffered loss of earnings as provided by Rule 70 of the Agreement."

The Carrier's highest officer in denying the claim replied that the work involved, ". . . is not work reserved exclusively to signal maintainers, to the exclusion of other classes of employes". He added that the contention of the Organization is not supported by historical practice, by Rule 16, by any restriction in the Agreement, or by the awards cited.

The Organization asserts only that a literal reading of Rule 16 requires the calling of Signal Maintainers for all emergency work, including the patrol work performed here by a "gang employes". The awards cited in support of that position do not involve fact situations parallel to the case before us. These relate to the calling of a junior employe, the calling of an employe not regularly assigned to signal maintenance work to perform that work, or cases with background facts dissimilar to the instant case.

Here, no maintenance work was performed. Any claim of exclusivity to the Signal Maintainers of the work performed by Kangris on the day set forth in the claim was specifically waived by the General Chairman. Thus, this Board is given only the general claim by the Organization of a "contract violation" by the Carrier.

The facts are clear. The language of the Agreement is clear. The Carrier is not restricted as to the class of employe to be called to perform the work here involved. There is no showing in the record by the Organization of any such restriction under Rule 16, nor of the violation of any other applicable part of the Agreement, whether or not timely raised during the progress of the 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 Contract 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 23rd day of July 1971.

DISSENT TO AWARD 18649, DOCKET SG-18843

The Majority (Carrier Members and Referee) in Award No. 18649, in its determination to relieve the respondent Carrier of its obligation to abide by its Agreement with its Signalmen, has fallen victim of its own treachery and has adopted a patently erroneous award.

In order to reach the version of its award finally adopted, the Majority had to twice revise its originally proposed version. That original version, even more clearly than the one which followed it and the one finally adopted, contained such glaring misstatements of the facts and of the position of the Employes that the Majority recognized that its proposal, if adopted, would be so ridiculous on its face that it would show its predetermination to mutilate the controlling Agreement.

In the first and second revisions attempt was made to remove the glare from the errors of the first proposal without changing its end result, but the veneer is so thin that one conversant with the facts needs no X-ray vision to see through it.

We have never seen an instance in which less regard for an Agreement has been shown. Award No. 18649 is error. We dissent.

W. W. Altus, Jr.
Labor Member

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