

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19615
Docket Number SG-19396

Frederick R. Blackwell, 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 Transportation Company (Pacific Lines) violated the Agreement between the Company and the Employees of the Signal Department, represented by the Brotherhood of Railroad Signalmen, effective April 1, 1957 (reprinted April 1, 1958, including revisions) and particularly the third paragraph of Rule 4 which resulted in violation of Rule 70.

(b) Mr. R. C. Walker be paid the difference between his rate of Leading Signal Maintainer and the rate of Signal Foreman for March 24, 25, 31, and April 1, 1970 -- a total of 32 hours at straight-time rate. (Carrier's File: SIG 145-166)

OPINION OF BOARD: This dispute arises under Agreement between the parties, effective April 1, 1957 and reprinted April 1, 1958, including revisions. This opinion shall also serve as the opinion in an identical case in (Docket SG-19420).

On the claim dates Leading Signal Maintainer Walker and Leading Signalman Hicks, together with one or more signal maintainers and one or more signalmen, performed signal repair work in the hump yard at Eugene, Oregon. Mr. Walker is senior to Mr. Hicks. The claim is that the work in question comes within the third paragraph of Rule 4 and that Mr. Walker is entitled thereunder to be paid the Signal Foreman rate for such work.

The record validates Carrier's assertion that claim dates of March 24 and 25, 1970 are barred by applicable time limits; accordingly, this portion of the claim is dismissed for lack of jurisdiction.

The basis of the claim is that the term "leading signalman", as used in the third paragraph of Rule 4 of the Agreement, is a generic term meaning both a leading signalman and a leading signal maintainer. Carrier contends that the third paragraph speaks exclusively of "leading signalman" and that the paragraph must be limited accordingly. Rule 4 of the Agreement reads as follows:

"RULE 4. LEADING SIGNALMAN-LEADING SIGNAL MAINTAINER

A signalman or signal maintainer working with and supervising the work of one or more signalmen or signal maintainers with or without their assistants and/or helpers.

In gangs not under the jurisdiction of a signal foreman, a leading signalman or leading signal maintainer shall not be required to lead and/or direct the work of more than three (3) employees exclusive of himself, except for temporary periods not exceeding ninety (90) calendar days in a calendar year, during which he shall not be required to lead and/or direct the work of more than four (4) employees exclusive of himself.

When two gangs, each under supervision of a leading signalman, are temporarily assigned to work together on a signal construction or repair project, the senior of the two leading signalmen will be in charge and will receive signal foreman rate of pay. It is understood that such individual will not acquire seniority as signal foreman under this rule."

We have examined the Awards cited by Petitioner and Carrier and find that none of these Awards are apropos to the situation presented by the instant dispute. However, we shall comment briefly on Petitioner's citation of Award 17642. That Award, which involved the same parties and the same Rule 4, contained the following statement by this Board:

"That Rule contemplates that a premium rate shall be paid to a Leading Signalman or Maintainer to compensate him for the extra burden of the responsibility of supervising other employees on construction and repair projects."

Taken literally the above statement does provide support for Petitioner's contention. However, examination of the Award shows that a Leading Signal Maintainer was in no way involved in the dispute before the Board and, therefore, we find no lessons in that Award with which to deal with the herein issues.

We have before us a straightforward issue of contract interpretation. The thrust of Petitioner's argument is that, as between a leading signalman and a leading signal maintainer, there are no distinctions to explain why a leading signalman should be covered by the third paragraph of Rule 4 while a leading signal maintainer is not. We have followed this reasoning very carefully and perceive that in some instances the Agreement has not made any apparent distinction between the two positions. However, Rule 4 of the Agreement, which is the part of the Agreement involved in this dispute, contains provisions that do deal with the two positions differently. In defining the two positions in the first paragraph of Rule 4, the text obviously takes as its subject the topical heading, "Leading Signalmen-Leading Signal Maintainer". In the second paragraph the text

refers to "a leading signalman or leading signal maintainer". But in the third paragraph the text refers only to "a leading signalman". The parties referred to both positions in the first and second paragraph of Rule 4, but referred to only one position in the third paragraph. In these circumstances we can but presume that the parties would have referred to both positions throughout the text of Rule 4 if such had been their intent.

We also note that other rules of the Agreement deal with the positions of signalman and signal maintainer as if there were no distinctions between the two positions. In these instances, however, it is the express text of the rule which produces the result of non-distinction between positions. This cannot be said of the text of Rule 4, so we think these non-distinguishing rules in fact reinforce our view of the meaning of the third paragraph of Rule 4.

We have also studied Petitioner's contention that the purpose of the Rule is to prohibit Carrier from combining two gangs without paying the foreman's rate of pay and that, given such purpose, the third paragraph of Rule 4 applies with equal logic to both positions. However logical this may be from Petitioner's viewpoint, we find no reason in the text of Rule 4, itself, or in any of the surrounding circumstances, to give effect to that purpose by contract interpretation. There is no doubt that the text refers exclusively to a leading signalman. If we added "a leading signal maintainer" to the text, we would enlarge the text beyond that agreed to by the parties.

For the foregoing reasons, we shall deny 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 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 does not have jurisdiction over the claim for the dates of March 24 and 25, 1970, but does have jurisdiction over the remainder of the dispute involved herein; and

That the Agreement was not violated.

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Claim dismissed in part and denied in part as indicated in
Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E.A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1973.