

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20167
Docket Number SG-19881

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 Transportation Company that:

(a) The Southern Pacific Transportation Company has violated and continues to violate the Agreement between the Company and the Employees of the Signal Department, represented by the Brotherhood of Railroad Signalmen, effective April 1, 1947, including revisions, and particularly the Scope, and Rules 3, 35, 36, and 70, by assigning work properly belonging to the Western Seniority District to the Division Inspector who holds seniority and rights on the San Joaquin Seniority District.

(b) Mr. Balison be allowed compensation in addition to regular compensation previously allowed for three hours each day at his pro rata rate for the following days: February 22, 23, 24, 25, 26; March 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30, 31; April 1, 2, 19, 1971, and continuing for each working day until the work which properly belongs to the Western Seniority District Division Inspector is properly assigned to him.

/Carrier's File: SIG 152-287/

OPINION OF BOARD: The claim is that the Carrier violated the Agreement by assigning signal work across seniority district boundaries. Specifically, the Petitioner contends that Division Signal Inspector (DSI) Minge, of the San Joaquin Seniority District, performed work which should have been performed by DSI Balison, of the Western Seniority District.

The claim presented to this Board involves work performed by DSI Minge (1) in the Office of the Signal Supervisor at Bakersfield, California, and (2) within the Stockton District (Fresno to Polk), which is part of the Western Seniority District. Item 2 of the foregoing, if established of record, would appear to involve an assignment of work across Seniority District boundaries. However, the Carrier objects to the consideration of item 2 on the ground that the claim presented and handled on the property involved only the "office duties" referred to in item 1; and that no mention was made of work performed away from the Bakersfield Office, as referred to

in item 2, until thirty (30) days after Carrier's final decision to disallow the claim. Carrier objects on the further ground that the undated letter of DSI Minge, which brought item 2 into the dispute, is vague and fatally defective for lack of specificity in regard to item 2. The pertinent part of the Minge letter reads as follows:

"...Mr. Penix sent me to obtain Inventories on Old Western Div. in as much as Western Division officials refused to send Oakland Div. Sig. Inspector to get this information...."

The foregoing statement of Mr. Minge indicates that he was sent physically to the Western District to obtain inventories affecting that district; however, the claim as initially submitted and progressed by the Employee, in letters dated April 19, May 27, and July 15, 1971, referred only to "office duties" amounting to three (3) hours a day. The claim made no reference of any kind to Mr. Minge's physical entry into the Western District to obtain inventories. Likewise, in the General Chairman's August 5, 1971 letter to Mr. Minge, requesting the latter to provide something in writing about the claim, the General Chairman referred to "office duties" only. Thus, from the Employee's own correspondence, it is clear that the claim presented and handled on the property was confined to "office duties". We also note that the quoted statement of Mr. Minge does not indicate whether one or more trips into the Western District were made, nor does it provide any date or location regarding the referred to trip and/or trips. Consequently, both of Carrier's objections to item 2 are well taken and, accordingly, we shall not consider the issue raised by that item.

In resolving the issues raised by the "office duties" performed by DSI Minge, referred to in foregoing item 1, the following rules are pertinent;

"Rule 3. SIGNAL INSPECTOR--DIVISION. An employee who is assigned to and whose duties include the inspecting and testing of signal apparatus, circuits and appurtenances, and the preparation and checking of plans and estimates."

"RULE 35. SENIORITY RESTRICTIONS. Seniority rights of employees shall be restricted to the territory over which one superintendent has jurisdiction, except as may be provided by agreement pursuant to Rule 36. (Revised effective January 1, 1958)"

"RULE 36. CHANGE IN SENIORITY DISTRICTS. In case of change in seniority districts the rights of employees affected will be adjusted in the revised districts by agreement between the Management and the General Chairman. (Revised effective January 1, 1958)"

The background of this dispute dates back to April 1, 1964, at which time the Carrier realigned the jurisdiction of the San Joaquin Division Superintendent, located at Bakersfield, California, to include the Fresno to Polk part of the Stockton District, Western Division. As a result of this realignment, the jurisdiction and supervision of signal facilities within the realigned territory fell to the San Joaquin Signal Supervisor headquartered at Bakersfield. The parties agree that no change in Seniority Districts (Rule 36) was made in connection with the realignment. (However, on the property, the Organization charged that Carrier's reasons for denying the claim constitutes an attempt to unilaterally make a change in Seniority Districts.) The Parties also agree that DSI Minge's "office duties" include work on plans for Signal Department projects on the territory of the Western Division (Fresno to Polk), which is under the supervisor of the San Joaquin Signal Supervisor. In the words of the Carrier -

"...Mr. Minge, the Signal Inspector--Division, holding seniority on the San Joaquin Seniority District, performed certain duties for the San Joaquin Division, in the Signal Supervisor's office at Bakersfield by marking office copies to reflect changes made in plans completed by Western Seniority District employees involving a Signal Department project on that seniority district..."

The parties disagree, however, on the consequence of DSI Minge's performance of the above mentioned work. The Petitioner cites Third Division Awards Nos. 4667, 10125, 11582, et al, as well as the February 7, 1965 Agreement, for the principle that work may not be taken across seniority District boundaries and, hence, an agreement violation is established by the mere showing that work on signal plans for the Western District was performed by an employee with seniority on another Seniority District. Contrarily, the Carrier calls attention to Awards No. 24 and 25, Public Law Board No. 15, from this same property, asserting that such Awards require this dispute to be resolved in Carrier's favor. Carrier also says there is no agreement provision which prohibits DSI Minge, an employee who holds seniority within the San Joaquin Seniority District, from performing the disputed duties at Bakersfield, a location within the confines of such Seniority District.

The Awards cited by Petitioner would prohibit the 1964 transfer of "office duties" concerning Western Division signal projects to the San Joaquin Division and the subsequent performance of such duties by a signal employee on the latter Division. We are not persuaded by these authorities, however, because later authorities have ruled differently. For example, in Award 13918 (Engelstein) this Board stated:

"Numerous awards have resolved cases involving the elimination of some work in one seniority district and the performance of additional work at another seniority district in which rules similar to those at issue in this dispute were involved. A number of these, including Awards 4667, 6938, and 9193, have held that a transfer of work entailed a change in seniority districts, and, therefore, was improper without negotiation. It is significant, however, that the last named award which Brotherhood emphasizes has been reviewed by Federal District Court in West Virginia in the case of Hanson vs. The Chesapeake Railroad 263 Fed. Supp. 56 (1964) held that there was no violation of the Agreement. The Court ruled that whether the change was a transfer of work or not since no change in seniority district was made, there was no need to negotiate with Brotherhood. In addition, other Awards such as Nos. 6655, 7420 and 9633, and Special Board of Adjustment No. 564, Award No. 4 previous to the Federal decision have denied similar claims."

For like and comparable rulings see Third Division Awards Nos. 14825, 16501, and 16686. See also the interpretation of the February 7, 1965 Agreement by Decision Nos. 43, 124, and 191 of Special Board of Adjustment 605.

Turning now to the Awards cited by Carrier, Awards 24 and 25, we note the Petitioner's argument that the claims in these Awards were denied because of insufficient evidence. We agree that these Awards conveniently lend themselves to this interpretation and, therefore, we shall not treat them as dispositive of this dispute. We come now to Carrier's contention that nothing in the Agreement prohibits DSI Minge from performing the disputed "office duties" at Bakersfield, since this location is within the confines of the San Joaquin Seniority District on which he holds seniority. With this contention we concur. The claim appears to be predicated on the

theory that the agreement provisions in Rule 35 (and perhaps 36) prohibited the transfer of "office duties" that occurred in 1964. We find no language in the agreement on which to base such a theory and we shall therefore deny the claim. We note in conclusion that our rulings herein do not in any way pass on the merits of a physical entry into a Seniority District by an employee from another Seniority District such as the entry indicated in the inadmissible item 2 set out in the second paragraph of this opinion.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1974.