

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20552
Docket Number SG-19943

Joseph Lazar, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Chicago, Rock Island and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island and Pacific Railroad Company:

(a) Carrier violated the Signalmen's Agreement, particularly the Scope and Rule 19, when, on February 18, 1971, Carrier officers were used to perform recognized signal work, and regular assignees were not called or used to perform the work which was performed by the officers.

(b) Carrier now pay to Signal Maintainers M. L. Barry and B. E. Peet additional time equal to 13 hours' overtime each (7:00 A.M. to 8:00 P.M.) as a consequence of the violation and for the loss of work opportunity.

/Carrier's File: L-130-4667

OPINION OF BOARD: The General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island and Pacific Railroad Company claims that the Carrier violated its scope rule on February 18, 1971 by using Carrier officers to perform recognized signal work. The Carrier disputes the factual foundation of the claim. The Carrier states: "In conclusion, the Carrier submits that the Petitioning Organization has not substantiated that Carrier Officers performed work exclusively reserved to the Signalmen's Craft. It is the Carrier's position that the officers in question performed only the incidental tasks necessary to their positions as supervisors."

The burden of proof in cases such as the one before us is on the Petitioning Organization to prove their case by presentation of a preponderance of competent evidence. In disputes involving the existence of irreconcilable conflict concerning essential operational facts, this Board is frustrated in fulfilling its statutory responsibilities under the Railway Labor Act to render final and binding awards on the merits and may be compelled to dismiss such claims. See, for example, Third Division Awards 19702, 19501, and 18871. Only in the last resort, however, where it is clear beyond any doubt from the record as a whole that there can be no rational determination of essential operational facts, will this Board consider the drastic step of dismissal. It is the right of the Parties to receive, and it is the duty of the Board under the Railway Labor Act to render, final

and binding awards on the merits on disputes properly before the Board.

The record contains affidavits of Signal Maintainers Richards and Peet concerning the events at issue. They certify that

"*on February 18, 1971, Rock Island Railroad Signal Department Officers K. O. Poyser and R. S. Carle did perform Signalman's craft work in connection with the signal changes at U.D. Interlocking, Joliet, Illinois, inasmuch as they actually made circuit changes and wiring hook-ups. I further certify that I witnessed same."

(Brotherhood's Exhibits Nos. 3 and 4).

In Petitioner's filing of claim with Signal Supervisor R. S. Carle on March 29, 1971, the work in question is described as "signal case wiring in the relay case," and it is alleged that Mr. Poyser "commenced such work at the beginning of work time." (Carrier's Exhibit "A"). The Petitioner alleges in its submission that "on the claim date Signal Testman Estes and First Trick Maintainer Richards worked on the project from 7:00 a.m. to 8:00 p.m. and during this period of time Officers Carle and Poyser were busy making circuit changes and wiring hookups, and such work was observed by Estes and Richards. Officers Carle and Poyser continued to perform the work after Second Trick Maintainer Peet reported for duty. This work was also observed and attested to by Peet." (R7). In Petitioner's appeal letter of May 27, 1971, the Grand Lodge Representative states: "Mr. Poyser commenced such work at 7:30 a.m., Mr. Carle joined in the work at noon and both continued to perform craft work until 8:00 p.m. that date. They performed the work in the presence of Signal Maintainers B. E. Peet and A. B. Richards and Signal Testman W. G. Estes. We cannot agree with Mr. Carle's assertion that Mr. Poyser did not perform wiring in the relay case. Factually, he did so at the same time Signal Testman Estes was performing the same type work in the same case, witnessed by Signal Maintainers Peet and Richards." (R14).

We have set forth in detail the Petitioner's basic assertions of fact in this case. The timing of events is not pin-pointed, and the precise acts, circuits, and wiring alleged to have been performed by the Carrier's officers in the relay case are not set forth with exactitude. Nevertheless, the events portrayed by Petitioner's allegations involve "wiring in the relay case" "at the same time Signal Testman Estes was performing" "the same type work" "in the same case". The acts alleged either took place or did not take place. The assertions of Petitioner are either true or false.

In opposition to the Petitioner's assertions of factual events, the Carrier asserts that Assistant Signal Engineer was present on plant from 7:30 a.m. until 12 Noon and "stated he observed Mr. Estes and Maintainer A. B. Richards were wiring in signal relay case and not Mr. Poyser." (R11). We note that this assertion does not relate to events prior to 7:30 a.m. nor to events alleged to have occurred subsequent to 12 Noon. Thus, Mr. Peet's observations and report of events occurring on his second trick assignment are not denied by the Assistant Signal Engineer's statement.

Further, in Supervisor Carle's letter (R11), it is stated:

"Mr. Poyser's prime function was to observe and instruct employees in installing the circuits in proper manner and to assist in checking out circuits and equipment when work was completed. There is nothing in the Signalmen's Agreement that restricts the inspection of apparatus or circuits from Signal officials to determine if employees covered by the scope of your agreement are properly installing or maintaining signal equipment or circuits on which work is being performed."

Additionally, the Carrier states in its letter denying appeal (June 22, 1971):

"The record indicates Messrs. Carle and Poyser in the performance of their duties as supervisors instructed the employees how to properly install circuits.

"They merely performed their proper supervisory function of instructing the employees on duty at the time. In the course of supervising, there are occasions when a supervisor is required to actually perform certain work. We do not consider this incidental work a basis for a claim."

This Board, in analyzing the Carrier's assertions, finds that there is no denial by the Carrier that the factual events of work by Messrs. Carle and Poyser did in fact and reality take place. Mr. Carle, an Officer of the Carrier, was present and implicated in the alleged happenings, does not deny the happenings.

In our analysis of the Carrier's assertions, this Board finds that the Carrier is naming and labelling the work events and is not denying the happening of the events themselves. It is common knowledge that acts and performances are the facts or events of reality, while name-calling or labelling of the facts that occurred is simply the use of language designed to accomplish one's purposes. Reasonable persons do not confuse the happening of events with the name-calling.

The Carrier, in its use of such language-labelling as "Supervision", "instruction", and "inspection", is raising an affirmative defense against the claim. Such an affirmative defense carries with it the burden of establishing by a preponderance of the evidence such acts and performances, the work, actually done by the officers. This burden has not been met. There has been no showing of any of the circumstances, acts, difficulties of wiring, etc., in support of the affirmative defense. Under the circumstances, without prejudice to the Carrier's position on a proper showing of facts of work constituting "supervision", "instruction," or "inspection", or work incident thereto, we cannot uphold this defense.

Orderly handling of grievances in the usual manner under the Railway Labor Act is nothing less than handling in good faith. Good faith, or a sincere and earnest effort to come to an understanding, is evidenced when both sides to a dispute come together on the property and make a complete, open, and honest disclosure of all relevant facts and arguments comprising their positions. See, in this connection, 325 U.S. 711, 721 n. 12; 307 F. 2d 21, 41; and 361 F. 2d 946. Carrier's Exhibit E reflects such good faith effort, but its contents do not alter our conclusion that the Petitioner has met its burden of proof by a preponderance of the evidence.

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 violated.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1974.