

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20604

Docket Number SG-20450

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Chesapeake and Ohio Railway Company
(Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District) that:

(a) Carrier violated and continues to violate the current Signalmen's Agreement, particularly Rules 4 and 28, when on or about April 3, 1972 Lyle C. Clark, a qualified Signalman, was assigned Signalman's work at Assistant Signalman's rate of pay.

(b) Carrier now pay Claimant Lyle C. Clark, C&O ID #2613340, the difference in rate of pay received and the Signalman's rate of pay, for all work assigned in violation of the Signalman's Agreement as cited in part (a) of this claim.

(c) Inasmuch as this is a continuing violation, said claim to be retroactive sixty (60) days from date of filing (June 6, 1972) and to continue until such time as Carrier takes necessary corrective action to comply with violation as cited in part (a). (Carrier's File: 1-SG-306; General Chairman's File: 720606-128)

OPINION OF BOARD: Claimant was assigned as an Assistant Signalman on August 3, 1970. On January 15, 1971, he was assigned as a Signalman, and continued in that position until October 14, 1971 when he was furloughed.

On April 3, 1972, Claimant was recalled as an Assistant Signalman.

The Organization asserts that Claimant should have been paid as a Signalman from June 6, 1972 (date of claim) until July 14, 1972 (date Claimant was "promoted" to Signalman position).

The Board feels that Claimant's work direction, under Rule 5(a) controls this dispute:

"(a) Assistant Signalmen, Assistant Signal Maintainers: An employee in training for a position of signalman or signal maintainer, working with and under the direction of a signalman or signal maintainer, shall be classified as an assistant signalman or assistant signal maintainer.

Note. - Insertion of the word 'with' in this paragraph is not intended to restrict assistants from performing work under the direction of a signalman or signal maintainer. It is not intended that the word 'with' means that assistants must work within any specified zone or distance in performing the work under the direction of a mechanic. Likewise, it is not intended that assistants be sent 'out alone and on their own responsibility to perform bona fide mechanics work.'"

We note a factual dispute, in this regard, between the parties, But, in October, 1972, Claimant executed an affidavit stating that when recalled on April 3, 1972, he was assigned to the same work and same duties he had previously performed as a Signalman, and that he worked under the same supervision of the Lead Signalman as he did prior to his furlough. Carrier's denials of Organization's position were generalized in nature and did not present direct evidence to contradict the above mentioned affidavit.

The Carrier has cited cases dealing with burden of proof. We find that Carrier has failed to disturb the Organization's proof in this case, and accordingly, we will sustain the claim from June 6, 1972 until the date Claimant was promoted to Signalman.

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;

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That this Division of the Adjustment Board has jurisdiction
over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained to the extent stated in the Opinion of the
Board.

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By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1975.