

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20801
Docket Number SG-20416

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company that:

(a) On or about February 29, 1972, the Carrier violated the current Signalmen's Agreement when Leader Signal Maintainer J. F. Rairdin was not called to perform overtime work on his assigned territory, but instead Carrier called B.S. Williams, Signal Maintainer, who is under the direction of the above-named Leader.

(b) The Carrier now be required to compensate J. F. Rairdin at his overtime rate for all time consumed by B. S. Williams in performing the above work at Steamboat Rock, Ia., 5:45 P. M. to 9:45 P. M., February 29, 1972.

[Carrier's File: 79-24-3]

OPINION OF BOARD: On claim date, Claimant J. F. Rairdin was the Leading Signal Maintainer in a road assignment compensated at a monthly rate and headquartered at Mason City, Iowa. Pursuant to a "Characteristic Notice" dated January 24, 1972 Carrier consolidated several prior existing signal maintenance territories into one territory staffed, in addition to Claimant as Leader, by a Signal Maintainer at each of four headquarters locations in the new territory viz, Eagle Grove, Gowrie, Hampton, and Mason City. In a letter accompanying the Characteristic Notice, Carrier informed each of the four Signal Maintainers as follows:

"In connection with the Mason City maintenance territory Characteristic Notice effective January 24, 1972, you will be under the direction of the Mason City Leading Signal Maintainer, and will perform service anywhere in such territory as directed by him."

Subsequent to the consolidation, on February 29, 1972 one B. S. Williams, Signal Maintainer was used to perform overtime work at Steamboat Rock, Iowa from 5:45 P.M. to 9:45 P.M. Williams was one of the Signal Maintainers under the direction of Claimant and was head-

quartered at Mason City. The Organization, on behalf of Claimant, maintains that Carrier violated the controlling Agreement when the Leader Signal Maintainer was not given the prerogative to answer the call rather than the Signal Maintainer.

The Organization contends at the outset that because of insufficiency of Carrier's denial on the property the claim is payable under the Time Limit on Claims Rule of the 1954 National Agreement. We have reviewed the facts on this point and the myriad of cases cited relating thereto. In the circumstances of this case, we do not herein find such procedural mishandling as to invalidate resolution of the merits. For similar reasons, we reject Carrier's motion that the claim be dismissed for alleged procedural irregularity regarding specificity of the date on which the violation occurred. The alleged procedural violations cited by each party are arguable at best, neither was prejudiced thereby in either efforts at settlement or resort to arbitration. Accordingly, we are not persuaded by either of the procedural arguments to divert our attention from the merits of this dispute.

The Organization cites several sections of the current Signalmen's Agreement but relies on the main upon the express language of a Memorandum of Understanding dated January 16, 1941 which reads as follows:

"The leading Maintainer at Mason City is in charge of the territory and it will be his prerogative to answer any calls on the territory.

If the leading Maintainer delegates to the Maintainer his prerogative to answer any call the Maintainer will be compensated at the leader's rate.

If while the signal Maintainer is acting as leading Maintainer, the leading Maintainer takes charge of that call or is called on another job, the Maintainer will revert to his own rate.

If the position of leading signal Maintainer becomes vacant the signal Maintainer will fill the position pending result of a bulletin."

Carrier for the most part bases its position on a denial of the relevance and applicability of the 1941 Memo of Understanding to the combined Mason City territory of 1972. In this connection Carrier asserts that the Memo was negotiated to cover a

specific set of circumstances existing in 1941 at Mason City and that, upon a change of those circumstances the Memo and its contractual obligation thereunder did in effect "self-destruct." Carrier points out that when drafted the Memo applied to a maintenance territory of some 300 miles, whereas after the 1972 consolidation of territory the Mason City combined territory is some 1400 miles in extent.

We have reviewed carefully the facts and the Agreement language cited. Based upon this analysis we are compelled to a conclusion that the clear language of the Memorandum of January 16, 1941 was violated when the Leader Signal Maintainer was not accorded the prerogative to answer the overtime call on February 29, 1972. The Agreement language therein says he has the "prerogative to answer any calls on the territory." The territory has been redefined by Carriers' Characteristic Notice of January 24, 1972 but such unilateral exercise of a management prerogative may not obviate the clearly articulated and mutually established prerogative of the employee herein. While adherence to such a contractual requirement is made more difficult by a quadrupling of the size of the territory it may not be obviated thereby. This Board will not so lightly disregard contractual commitments in the interests of expediency. The appropriate tribunal for seeking relief from Agreement provisions made onerous by changing circumstances is the negotiating table and not the arbitration tribunal.

In light of all the foregoing we shall sustain 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 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. Paulson*
Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1975.