

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20866
Docket Number SG-20735

Louis Norris, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
(Erie Lackawanna Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie Lackawanna Railway Company:

On behalf of W. K. French, monthly rated Foreman of Maintainers, headquartered at Patterson, N. J., New York Division, for eight hours at time and one-half rate for work performed on Saturday, November 25, 1972, the sixth day of his work week. [General Chairman File #473; Carrier's File 215-Sig.]

OPINION OF BOARD: Claimant in this dispute is a monthly rated Foreman of Maintainers, Saturday being the sixth day of his work week and Sunday being his assigned rest day. On the Saturday here in issue, Claimant was ordered to work with a designated crew of Signalmen in "replacing switch timbers" at a specific switch No. 37. Demand is made for compensation as detailed in the Statement of Claim.

Petitioner contends that under the provisions of Rule 7 of the controlling Agreement, specifically Rule 7(d), Foremen are not required to perform "ordinary maintenance or construction work" on the sixth day; that the work here involved "was unquestionably ordinary maintenance work", and accordingly the stated claim for compensation should be sustained.

Rule 7(d) provides that ordinary maintenance or construction work not heretofore required on Sunday will not be required on the sixth day of the work week. There is no dispute on this issue; the dispute here relating to what constitutes "ordinary maintenance work."

Petitioner directs our attention to certain new matter not raised on the property and therefore improperly before the Board as part of the appellate process. However, we need not concern ourselves with these matters (which relate to a statement made by Petitioner in a prior dispute), since they have no relevancy to the basic issues upon which this dispute must be resolved, particularly in view of the unambiguous language of Rule 7(d).

On the merits, Petitioner argues that "what is ordinary is dictated by the nature of the work", irrespective of the surrounding conditions. As a matter of logic, we cannot agree. For, if the attendant conditions and circumstances governing the performance of the work are unusual and extraordinary in themselves, the work in issue becomes extraordinary. That in essence is the crux of this case.

In the latter context, Carrier contends that Switch No. 37 here involved governs all train movements, east and west, from single track to double track territory, and that this comprises the movements of some 50 trains on weekdays, including 38 commuters. Whereas, on Saturday, train movements at this site are limited to 9 commuter trains. Thus, it is argued, the performance of the work in question on weekdays would result in serious disruption of such train service. The latter contention was raised specifically during the progress of this dispute on the property.

Petitioner cites Award 18357 (Dugan) as precedent on this issue, but we cannot accept it as controlling here; nor can we follow the rationale of the narrow distinction upon which that Award was based. Furthermore, that Award did not at all go into the question of what constitutes "ordinary maintenance work". Accordingly, it has no bearing on the issues of this case.

On the other hand, Carrier contends that this dispute in essence is precisely similar to our Award No. 17993 (Quinn), which denied the claim and in which the same parties, the same Rule and substantially the same facts were involved. The only basic difference being that there the disruption of service affected 100 trains, whereas here it affected some 50 trains. Accordingly, Carrier urges that the principle of stare decisis is applicable to this dispute, citing various precedents on this issue. See Awards 10911, 10086, 11345 and 20010, among others.

This Board has consistently adhered to the principle of stare decisis, particularly where there is no showing of palpable error in the prior Award.

"It is the opinion of the Board that, in general, a settled interpretation of rules, relied on by the parties, should be left undisturbed, subject only to mutual amendment by the parties through collective negotiation." See Award 17363 (Yagoda).

We concur, therefore, in the reasoning and conclusions of Award 17993. Specifically, we find that the record supports the contention of Carrier that the complete disruption of operation of 50 trains, including 38 commuter trains, cannot be classified as ordinary conditions. The work here involved, therefore, assumed extraordinary character and did not fall within the strictures of Rule 7(d) governing "ordinary maintenance work."

Additionally, we quote from Award 2456 (Larkin), 4th Division, in which the language of the Rule was somewhat different, but which involved the identical principle as here and the same factual situation:

"No rule has been cited which would require the Carrier to make additional payment at the punitive rate for work performed under such circumstances. While this work did not involve such emergencies as fires, floods, other "Acts of God," or a train wreck, we can find nothing in the language of Rule 8 which requires the Carrier to pay punitive rates for week-end work where this type of extraordinary situation prevailed."

To the same effect, see Award 17993, supra, in which Rule 7(d) was specifically involved.

Accordingly, based on the record and controlling authority, we will deny this 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1975.