

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21543
Docket Number SG-21307

Walter C. Wallace, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company:

On behalf of Signal Maintainer B. S. Howard for 2.7 hours overtime at the punitive rate of pay account Signal Foreman P. G. McMahan assisting Signalman P. Atwood and J. Snowden in determining and correcting a failure at the hump yard at Kansas City on Saturday, April 20, 1974. /Carrier file: G 225-663/

OPINION OF BOARD: This claim arises out of a failure of retarders in the hump yard at Kansas City during the early hours of Saturday, April 20, 1974. Signalman Snowden was on shift and when he could not determine the cause of the problem carrier called on Signal Foreman P. G. McMahan who had technical knowledge and special testing equipment to determine the cause. Foreman McMahan is normally in charge of Construction Gang 1001 headquartered at Independence and was familiar with the equipment at the hump yard. He reported and located the cause of the problem by using the specialized testing equipment. Thereafter Signalman Snowden was instructed to make the repairs. Meanwhile the first shift Signalman Atwood reported for duty. Snowden was held over to work with Atwood and the repair was carried out. The claimant is the second shift signalman and he was not called for the overtime.

The claim is premised upon violations of Rules 101, 307 and 309 of the agreement. Carrier denies these violations. The matter was progressed on the property in the usual way except that the Organization alleged that Carrier's answer to its appeal had not been received within the 60 day time limit rule and therefore payment of the claim should be made under the contract. No other evidence or comment was made concerning the time limit rule on the property.

The Organization cites a number of awards sustaining claims under the time limit rules such as Rule 701. The Carrier, in turn, answers this procedural claim on various grounds. We need consider only that the claimant failed to make this a part of his formal statement of claim. We have reviewed all the awards cited by the Carrier and the Organization and each included the issue of time limits in its formal statement of claim with one exception, Award 20763 (Lieberman). In that case the time limit question was raised on the property and was fully discussed in the opinion, but no mention was made that the issue was not raised in the formal statement of claim. Accordingly,

we do not consider that this award represents authority contrary to the general view reflected in the awards, that the time limits issue must be included in the formal claim. That was not done here and we find it is decisive on this issue. See Awards 17512 (Dugan) and 11006 (Boyd).

On the merits of this dispute, we are directed to Rules 101, 307 and 309 of the agreement which provide:

RULE 101

Signal Gang or Signal Shop Foreman:

"An employee who is assigned to a signal gang or signal shop and whose principal duties are to supervise and direct the work of other employees assigned under his supervision and who is not required to regularly perform any of the work over which he has supervision."

RULE 307

Preference to Overtime:

"When overtime service is required of a part of a gang or group of employees, the senior employees of the gang or group of the class involved who are available and desire the work will be given preference to it, when practicable to do so."

RULE 309

Subject to Call:

"Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad and will notify the person designated by the Management where they may be called. When such employees desire to leave their home station or territory, they will notify the person designated by the Management that they will be absent, about when they will return, and when possible, where they may be found. Unless registered absent, regular assignee will be called."

Considering these rules in order, we have a problem at the outset with Rule 101. The plain wording of that rule describes the work of signal gang foreman and it does not prohibit other work. The Organization contends that Rule 101 read with Rule 106 makes it clear this work of testing belonged to the Signal Maintainer. The difficulty here is that we are precluded from considering issues relating to rules other than those cited on the property. The Organization's submission violates this insofar as it relies upon Rule 106. Moreover, even if this rule was to be considered the plain wording of it does not provide the support the Organization contends. We are not persuaded, therefore, that the argument based upon Rule 101 prohibits the testing work performed by the signal gang foreman here. In Award 12668 (Dorsey) the Board made reference to classification rules and stated: "They are not exclusive grants of work to each classification." It would require strong evidence in this record to persuade us to adopt a contrary view. We do not find it and the contention that Rule 101 is violated must be rejected.

When we consider the other alleged rule violations, we have different considerations. Rule 307 prescribes the rule for overtime preference within the "gang or group of the class involved" in that seniority will prevail. With respect to the class that includes Claimant, Snowden was the senior man and he was the only one who received overtime pay. It does not follow that this argument could be extended to the signal foreman. He is not in the same class. The awards of this Division have had no difficulty pointing out that rules requiring the call of a senior man in a class do not have application when the claimant and the employee called are not in the same class. The issue most frequently arises with respect to signalmen and leading signalmen. See Awards 13262 (Moore); 18866 (Dugan); 18296 (Dolnick); 15151 (Hall); 12936 (Yagoda); 12134 (Sempliner). We believe the rule gains added force when applied to a signal gang foreman and a signal maintainer. For these reasons we find no violation of Rule 307 here.

The Organization's argument under Rule 309 makes reference to Rule 106 and, as indicated above, this rule is outside the ambit of our consideration. Rule 309 itself is a "subject to call" rule that prescribes that an employee regularly assigned maintenance duties may be called and provides for procedures when the employee desires to leave his home station or territory. We cannot see that this rule places an obligation on the Carrier to call signal maintainers under the circumstances here. This work was being carried out by two signal maintainers (including one on overtime). We do not believe the Carrier can be obligated to call out another maintainer based on this rule.

We conclude that none of the cited rules were violated here based upon the facts developed on the property. The retarder failure that occurred was critical to the operation of the Kansas City hump yard. Only after the signal maintainer on duty could not determine the cause, did Carrier call in the signal gang foreman who had special knowledge of the equipment and specialized testing equipment. When he found the cause of the problem, the signal

maintainer on duty was held over on overtime to do the repair work and he was joined by the first shift maintainer when he came on duty. Absent proof that the Claimant had specialized skill in this area and he is protected by specific rules of this agreement for an overtime call out such as this, we must deny 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 not violated.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May 1977.

