

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21925
Docket Number SG-21815

John P. Mead, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation
((Former Penn Central Transportation Company)

STATEMENT OF CLAIM: Claims of the General Committee of the Brotherhood
of Railroad Signalmen on the former Boston and
Albany Railroad:

Claim No. 1

System Docket B&A-3, New England Division Docket 15705

Grievance that the Carrier provide proper information on B&A
bid bulletin No. 1-75 dated March 4, 1975, alleging a violation of
Rules 2, 33 and 35 of the Schedule Agreement.

Claim No. 2

System Docket B&A-4, New England Division Docket 15908

Claim account Signal Department employees R. J. Moran, R. J.
Tomasetti, J. A. Brady, J. F. Ness, J. F. Lynch, and J. F. Garvin being
improperly classified as Signal Mechanics rather than Signal Maintainers.

Claim No. 3

System Docket B&A-6, New England Division Docket 15910

Grievance account Signal Maintainers R. J. O'Donnell and
N. Pashkovsky being improperly assigned as to territory.

Claim No. 4

System Docket B&A-8, New England Division Docket 15909

Grievance account alleged violation of Agreement account in-
correct advertising of Signal Helper position for bid on Bulletin 3-75
which was dated May 19, 1975.

Claim No. 5

Railroad Docket 15512

Claim on behalf of R. J. O'Donnell and N. Pashkovsky, commencing
60 days prior to February 26, 1975 and continuing until a settlement is
reached:

1. Eight hours pay Monday through Friday at straight time rate, 5 days each week.
2. Eight hours pay Wednesday through Friday at half time rate, 3 days each week.
3. Eight hours pay Saturday and Sunday at half time rate, two days each week.
4. If required to work Wednesday through Friday after 11 p.m., all time shall be double.
5. An allowance of 60 miles per work day auto expense at the established rate.
6. An allowance of 2 hours per work day at time and one-half for travel time to new positions from their former ones.
7. An allowance for meal expense for all meals observed.
8. An allowance of time and one-half for all hours worked off their new headquarters section #1, on other sections in the division.

Claim No. 6

Railroad Docket 15513

Claim on behalf of R. F. Higgins, R. J. Moran and R. J. Tomasetti for all hours worked on the claimants respective signal sections by Messrs. R. J. O'Donnell and N. Pashkovsky during the off duty hours of the respective claimants, the hours claimed to be at the overtime rates of pay and the claim to be continuing from 60 days prior to February 22, 1975 (date of initial claim) until settled.

OPINION OF BOARD: The six claims advanced under Docket No. SG-21815 have been examined separately by this Board, and the following findings made with respect thereto:

Claim No. 1

No violation of Rules 2, 33 or 35 is found.

This Board does not find any language in Rule 2 which requires the Carrier to assign an Assistant Signal Maintainer to the same headquarters and territory as the Signal Maintainer, as initially claimed by the employees. Nor do we find any contractual requirement that all step rates of the position must be set out in the bulletin advertising an opening in order to comply with Rule 33 or 35.

Claim No. 2

The Organization claims certain signal employees on the Boston seniority district were misclassified as Signal Mechanic instead of Signal Maintainer, in violation of Rule 2(d), and requests their re-classification. This claim is based upon the contention that Rule 2(d) "defines the titles of various employees based on their work responsibilities."

The Carrier points out that Rule 2(d), relating to the classifications of Signal Maintainer and Signal Mechanic, provides in part:

"When assigned to the maintenance of a section or plant, the classification will be signal maintainer. When assigned to a shop, gang or crew, the classification will be signal mechanic."

Since the claimants were assigned to a signal gang at the time of this dispute they were properly classified under Rule 2(d), in this Board's opinion. The Organization's argument that their primary duties (maintaining signal facilities) should govern their classification, cannot be accepted in the face of the specific language of Rule 2(d) quoted above.

Claim No. 3

This claim arises from the alleged improper assignment of two signal maintainers--"as to territory." Both assignments were effected by Bulletins awarding the respective positions--one on December 12, 1974 and the other on January 17, 1975. This claim was filed on May 27, 1975, in excess of the 60 day time limit provided in the Agreement.

The Organization contends that such time limit does not apply because this dispute involves a continuing violation which is subject to claim at any time under Section 3 of Article V of the applicable Agreement

Referee Ives in Award 14450, cited in Award 19341 (Referee O'Brien), distinguished between continuing and non-continuing claims, as follows:

"Recent awards of this Board have held that the essential distinction between a continuing claim and a non-continuing claim is whether the alleged violation in dispute is repeated on more than one occasion or is a separate and definitive action which occurs on a particular date."

In the current dispute this Board finds that the awarding of the positions on December 12, 1974 and January 17, 1975, respectively, were definitive, non-continuing acts which constituted the occurrence of the dispute and initiated the 60-day period provided by Article V (1)(a) of the August 21, 1954 Agreement. Claim No. 3 must, therefore, be dismissed for failure to comply with the procedures established by the parties. (See Award No. 20330).

Claim No. 4

Petitioner claims the Carrier violated the Agreement by advertising a Signal Helper position for the entire Boston seniority district, rather than limiting it to the territory of the maintenance section of the Foreman who supervises the Signal Helper position being advertised.

The Board finds no evidence in the record of any rule or agreement which prohibits the Carrier from advertising a Signal Helper position covering the entire Boston seniority district. Nor do we find any provision in the Agreement which limits a Signal Helper to working for only one Foreman.

Claim No. 5

This claim is based on the contention that the second trick positions held by claimants were improperly established and that claimants should be compensated as though they held first trick positions. Carrier concedes that the two positions were staggered to provide seven-day coverage, and argues that the so-called Forty Hour Week Agreement expressly recognizes that work weeks may be staggered in accordance with operational requirements. This position was recognized in Award 6946 and numerous subsequent awards. Award 21394, citing 6946, further stated, "we cannot agree that the purpose of avoiding a penalty rate of itself invalidates staggering."

The Board finds no violation of Rule 4, 5, 7 or 39.

Claim No. 6

This claim is filed in behalf of three first trick employes who contend that the second trick assignments protested in Claim No. 5 deprived them of overtime.

Having found nothing improper concerning the second trick assignments in Claim No. 5, there is no basis for the compensation claimed in Claim No. 6.

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 Employes involved in this dispute are respectively Carrier and Employes 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

Claims No. 1, 2, 4, 5 and 6 are denied.

Claim No. 3 is dismissed for lack of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1978.