

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24189
Docket Number SG-24378

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Illinois Central Gulf Railroad

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Gulf Railroad:

On behalf of Leading Signal Maintainer R. W. Wilson for the difference between Leading Signal Maintainer and Foreman rate, and on behalf of Assistants L. D. Gilmore and B. L. Vance for the difference between their assistant rate and the signalman rate. Claim was initiated September 15, 1980, on the basis these payments should be made 60 days retroactive to that date and to continue until a Foreman and Signalman positions are properly bulletined and filled." (Carrier file: 135-701-206 Spl. Case No. 365 Sig.)

OPINION OF BOARD: This claim arises out of disapproval by the Union over action by the Carrier in establishing signal gangs without a foreman. Such disapproval is based on Union claims that such action is unsafe, violates past practice and the Agreement of September 1, 1976.

Relevant to the Union's claim are the following rules:

"Rule 2

JOB CLASSIFICATIONS

(b) Foreman: An employee who is assigned to the duties of supervising the work of other employees classified herein and who is not required to regularly perform any of the work over which this employee has supervision.

(c) Lead Signal Maintainer: A signal maintainer working with and/or directing the work of one or more signal maintainers and/or more than one assistant. The total number of employees so directed shall not exceed a total of five at any time.

(d) Signal Maintainer: An employee assigned to maintenance duties on a territory, plant, or section to perform such work as inspections and tests, not covered by the classification of inspector, and light general repairs on an assigned territory.

(e) Traveling Maintainer: A signal maintainer assigned to the duties of the maintenance of a territory including isolated facilities and who does not return to a home station each day.

(f) Lead Signalman: A signalman under the direction and instruction of a foreman, working with and/or directing the work of one or more signalmen with or without their assistants. The number of employees so directed shall not exceed a total of five at any time.

(g) Signalman: An employee assigned to perform signal work as outlined in the scope of this agreement.

(h) Assistant: An employee in training."

"Rule 8

HEADQUARTERS

Employees' time will begin and end at their headquarters so designated by bulletin; when hotels, motels or other lodging facilities are the specified headquarters, the bulletin will identify the signal gang unit in which position exists. Lead signalmen will have common bulletined headquarters with the foreman to whom assigned. Signalmen within a gang, will be assigned a common headquarters. However, a signalman position may be bulletined with headquarters at the location of the Signal Supervisor's headquarters or at a shop, if the shop is located at a different point. Assistants will have common headquarters with the employee to whom assigned."

"Rule 11

DIVISION SIGNAL GANGS

(a) The regular assigned working territory for a division signal gang will correspond with a division engineer's jurisdiction. Signal gangs' territorial assignments will correspondently fluctuate with changes in division engineers' jurisdiction.

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"Rule 18

JOB ABOLISHMENTS

(b) Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of rules in this agreement.

***"

In arguing its claim the Union asserts Rule 2(b) provides that all employees classified herein will work under the supervision of a foreman.

Carrier states the dispute began in early 1979 when the Company worked two assistants with a signal maintainer on a division signal gang. The Union contended a foreman should have been assigned. Carrier added that on April 23, 1980, Union filed a Section 6 notice under the Railway Labor Act, stating its desire to revise existing Agreement of September 1, 1976. The proposed revisions included requested changes in a number of rules. The changes proposed relevant to this dispute were for Rule 2 as follows:

"Rule 2 of the Schedule Agreement shall be amended to provide:

(c) Lead Signal Maintainer: A Signal Maintainer under the direction and instruction of a foreman, working with and/or directing the work of one or more signal maintainers with or without their assistants. The number of employees so directed shall not exceed a total of five at any time."

The Section 6 Notice was withdrawn in December, 1980, submitted in the same form under date of February 10, 1981. This latter notice was still pending at the time of Carrier's statement.

Clear provisions of Rule 2(b) show a foreman to be an employee assigned to supervise other employees classified under the rule. It does not require that a foreman be assigned to supervise all gangs as contended by the Union. This point is clearly demonstrated by Sec. 2(c), the classification rule for Signal Maintainers, which provides for him to work with and/or direct the work of one or more signal maintainers. The only prohibition in the rule is that the number of employees so directed shall not exceed five. Nowhere in this rule is a requirement for a foreman. Similarly, none of the classification definitions under Rule 2 mention safety in relation to the duties and responsibilities of foreman or signal maintainer. Classifications for both positions are limited to the authority of foreman to supervise or signal maintainers to direct. There is no basis for contending that a foreman would be more responsible for safety in his supervisory role than a signal maintainer in directing the work of maintainers or assistants.

A part of the Union argument in support of the claim is that establishing gangs without a foreman violates past practice. The carrier denies this and also points to the clear provisions of the Agreement which do not require a foreman to be assigned to all signal gangs. In view of the absence of specific provisions requiring assignment of a foreman and the clear provision giving signal maintainers authority to direct maintainers or assistants, the Board is unable to agree with the Union contention that a foreman is required to be assigned to all gangs. The fact that Agreement rules are specific on these points takes precedence over Union's allegation of past practice. This principle has been followed in countless past awards of the Third Division, as illustrated in Award 16807 of Referee Devine:

"Employees' reliance on past practice to support the allegation of violation of Rule 11(b) must be rejected for the reason that we have often held that practice is not controlling when provisions of an agreement are clear and unambiguous. See Awards 4501, 9193, 9419, 14599."

Finally, it appears that the Union seeks by its Section 6 notice to revise Rule 2(c) so that a signal maintainer be required to work under a foreman. If, as the Union contends in this claim, Rule 2(b) presently requires all employees under the Classification rule to work under a foreman, it follows that the rules revision as covered by the Section 6 notice would be unnecessary. As was stated by Referee Devine in Third Division Award No. 16807:

"We have often held that a request for a rule change is one of the best ways to indicate that the existing rules do not supply the authority to do what the proposed language covers. See Awards 11580, 12955, 13161, 15394, 15488."

(Hall): Another award directly in point to the controversy here is Award 11580

"This Board has held that such a request by a Claimant, for a change or revision of a rule and/or rules in an existing agreement, is an implied admission that the Agreement did not reserve to the Claimant the right and/or rights sought to be enforced."

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 Employee involved in this dispute are respectively Carrier and Employee 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.

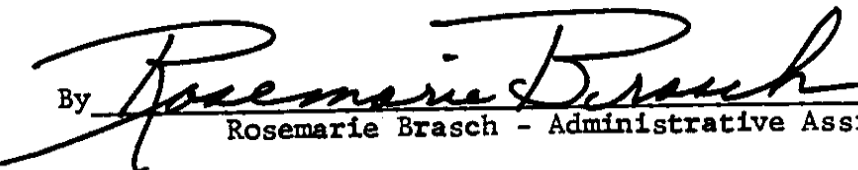
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of February 1983.