NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24263
Docket Number SG-24139

THIRD DIVISION

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Burlington Northern Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern:

On behalf of Interlocking Signal Maintainer T. E. Ahrens and Signal Maintainer O. D. Foreman for half time pay for working off their territory on the following dates:

T. E. Ahrens:	8 hrs. on May 6, 1980 2 hrs. on May 7, 1980
O. D. Foreman:	4 hrs. on April 14, 1980 4 hrs. on April 18, 1980 6 hrs. on May 5, 1980 6 hrs. on May 27, 1980"

(General Chairman file: SP-80-231) (Carrier file: SI-60 8/19/80)

OPINION OF BOARD: Claimants contend that Carrier violated Rule 45-J when it denied them half time payment for time working assigned territory on crossing signals of the Milwaukee Railroad. They argue that while Article II Section 8 of the March 4, 1980 Labor Protective Agreement permits the commingling of work, they are still, nevertheless, assigned by bulletin to set territory and entitled to one-half (½) time their hourly rate for the time worked off their assigned territory. In effect, they assert that the March 4, 1980 Labor Protective Agreement does not relieve Carrier or its contractual obligation to comport with Rule 45-J of the controlling Agreement.

Carrier contends that Rule 45-J was not violated since Article II, Section 8 of the March 4, 1980 Labor Protective Agreement permits the extension of territory and the commingling of work on the acquired Milwaukee and Rock Island Lines. It argues that the controlling Agreement is silent on the question as to whether signal employes must be notified in writing of changes in their assigned territory and Paragraph A of Rule 28 only provides for the rebulletining of a position when the pertinent criteria for changing a job are established. It asserts that the General Chairman did not request that Claimants position be rebulletined pursuant to Rule 28 or that the General Chairman contested its letter of March 24, 1980, wherein it apprised him that it was exercising its commingling option under the March 4, 1980 Labor Protective Agreement. It further contends that the claim is procedurally defective since Claimants' initial position was untimely filed. It argues that Claimants presented claims for the dates of April 14, 18, May 5, 6, 7 and 27, 1980 and their claim letter, dated July 8, 1980 was not received until July 11, 1980.

In our review of this case, we concur with Claimants' position that the claim was timely filed since the tolling of a presumptive violation would begin on May 15, 1980 when they actually received their pay checks. The claim letter, dated July 8, 1980 was received by Carrier on July 11, 1980 was properly submitted within the 60 days time limit of Rule 53 and, as such, is procedurally valid.

In reviewing this case, we must note that both the controlling Agreement and the March 4, 1980 Labor Protective Agreement are coordinative agreements and must be read within that coordinative context. Under Article II, Section 8 of the March 4, 1980 Labor Protective Agreement, Carrier was permitted "to commingle work in connection with lines acquired from the Rock Island and/or the Milwaukee with work in its existing seniority districts, including expansion of those seniority districts to encompass the acquired lines". The aforesaid provision pertained only to those acquired rail lines. It notified the General Chairman by letter, dated March 24, 1980, that it would commingle work of the Signalman's Craft on/or related to the former Milwaukee property with work of its own employes on the adjacent seniority districts in accordance with the March 4, 1980 Labor Protective Agreement, but the General Chairman never objected to this letter. The Organization, instead, argues that Rule 45-J was violated because Rule 28 was not followed. Carrier argues that the burden of enforcing that Rule 28 devolves upon the General Chairman but avers that he did not assert his rights under this rule. Rule 28, of course, permits the General Chairman to request that a position be bulletined when a change is made in the location of an employe's headquarters, when the fact is established that the territorial limits are materially changed or a material change is made in the apparatus to be maintained. Carrier, by its letter of March 24, 1980, apprised the Organization that it wanted to exercise its rights under the March 4, 1980 Agreement, but we cannot determine exactly whether or not by its notice, it intended to extend Claimant's territory to include the former Milwaukee Road. The March 4, 1980 Labor Protective Agreement permits Carrier to commingle work with work in its existing seniority districts, including expansion of those seniority districts to encompass the acquired lines, and the facts as presented here can be interpreted to mean that Carrier wanted to extend Claimant's territory to include the former Milwaukee Road.

Since we are compelled by this finding to deny the claim, we would be remiss if we did not note that the record was ambiguously developed. The arguments of the parties should have been more lucid.

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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of March 1983.