

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24965
Docket Number SG-24994

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al:

(a) Carrier violated and continues to violate the Signalmen's Agreement, particularly Scope Rule 1 and Rule 2 (a), when they permitted C&S Supervisor T. G. McLemore to take the place of a foreman and supervise a group of employees, other than foremen, included in Rule 2. Supervisor McLemore is not covered by the Signalmen's Agreement and has no contractual right to take the place of a foreman.

(b) Carrier should now be required, because of this violation, to pay Signalman T. E. Mutta the foreman's rate of pay, based on 213 hours per month, in addition to any other pay he has earned as a signalman or will earn as a signalman for as long as Supervisor McLemore is permitted to take the place of a foreman.

(c) Claim is to be retroactive sixty days from this date and is to continue for as long as the employees are worked as a group with Supervisor McLemore taking the place of a foreman as specified in Rule 2 (a).

[General Chairman file: SR-264. Carrier file: SG-534]

OPINION OF BOARD: This is a contract interpretation dispute initiated on December 12, 1981 by the Organization on behalf of Signalman T. E. Mutta. The Organization's claim is that the Carrier violated the Signalmen's Agreement when they allowed a C & S Supervisor T. G. McLemore to take the place of a foreman overseeing work by five employees on the upgrading of crossing signals. In allowing a Supervisor to take the place of a Foreman, the Organization maintains the Agreement was violated as a Supervisor is not covered by the Scope of the agreement. The senior employee therefore should have been appointed Foreman as Foreman's duties were performed. The Carrier flatly denies that a Foreman was needed, that Foreman's duties were performed and that C & S Supervisor McLemore took the place of a Foreman. In its letter of February 8, 1982, Carrier states for the record that "the only duties performed by Supervisor McLemore were the normal duties of a supervisory officer ...".

In the mind of this Board the central issue at bar is the question of whether or not C & S Supervisor McLemore took the place of and performed the duties of a Foreman when the group of five employees were assigned to rework crossing signals. The Board has thoroughly reviewed the arguments presented to it and the Awards presented by each party to the dispute as providing precedent. The Board has also carefully reviewed the record as developed on property and focused closely on evidence of probative value to determine if a Supervisor took the place of a Foreman.

The National Railroad Adjustment Board has held repeatedly that the weight of the evidence for any claim is the responsibility of the moving party (Third Division Awards 13691, 19506). The Organization bases its claim in part on Brotherhood's Exhibits No. 9 and No. 10. The Carrier maintains these were not handled on property. Such key evidence must be clearly documented. A careful review indicates they were not obtained and dated early in the case. They were not dated prior to the conference on May 17, 1982. They were not discussed, alluded to, or addended to any correspondence as handled on property, nor is there any evidence on property that such letters were presented to the Carrier. It is a firmly established principle codified by Circular No. 1 and at the base of numerous awards (Third Division Awards 20620, 22054, 24716) that this Board cannot consider materials which were not handled on property. As such, this Board firmly holds that it may not consider these material exhibits.

A review of the record as developed on property shows that the Organization has failed to present sufficient substantial evidence of probative value to establish that C & S Supervisor T. G. McLemore performed the duties of Foreman. The burden of proof is on the moving party and as such, this Board denies the claim since the burden has not been met.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

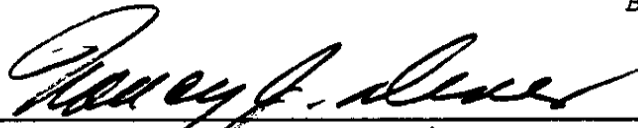
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1984.

