

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway System (SOU):

On behalf of Signal Maintainer C. B. Wham, headquarters St. George, S. C., assigned working hours 8 a.m. to 5 p.m. Monday thru Friday, Rest day Sunday, for the following:

(a) Carrier violated the Signalmen's Agreement, particularly Scope Rule 1 and Rule 2-A, on January 12, 1988, when they permitted S&E Supervisor A. W. Lane to take the place of a foreman and supervise a group of employees other than foreman included in Rule 2. Supervisor Lane is not covered by the Signalmen's Agreement and has no contractual right to take the place of a foreman.

(b) Carrier now should be required to compensate Signal Maintainer C. B. Wham for 11 hours at the Foreman's rate of pay in addition to any other pay he has received as a signal maintainer because Supervisor Lane was permitted to take the place of a foreman on January 12, 1988." G. C. File SR-1-88. Carrier file SG-720.

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On January 12, 1988, the Claimant and three other signal employees performed work under the supervision of A. W. Lane, a Signal & Electrical Department Supervisor. The Organization thereafter filed a claim on the Claimant's behalf, contending that the Carrier's use of Supervisor Lane as a Foreman violated the current Agreement. The Carrier denied the claim on grounds that the Agreement does not prohibit the use of a Supervisor to supervise a group of employees.

This Board has reviewed the record in this case, and we find that the Carrier violated the Agreement, specifically the Scope Rule and Rule 2(a), when it allowed S & E Supervisor A. W. Lane to supervise a group of four employees who were working on the same project as a gang. This Board finds that the Carrier should have assigned someone covered by the Agreement to the Signal Foreman position rather than assigning a Supervisor to perform that role. The record reveals that Signal Maintainer C. B. Wham is the senior employee in the group who should have been paid the Signal Foreman rate of pay.

This Board has ruled on this issue on several occasions in the past. In Third Division Award 23959, we held:

"The operative facts are that the Carrier did assign someone, i.e., a Supervisor, to the group and that he supervised them while they were performing signal work. In the Board's view, those facts effectively brought the Supervisor within the clear language of Rule 2(a), which defines who a 'Signal Foreman' is. Thus, it appears that while in a status outside the coverage of the Signalmen's Agreement, the Supervisor was actually performing the functions of a signal foreman as described in Rule 2(a). Therefore, in the Board's opinion, he did take the place of a signal foreman and performed work restricted to a signal supervisor. In the Board's opinion, such a substitution tends to undermine the essence of the Scope Rule." See also Award Nos. 24149 and 25932.

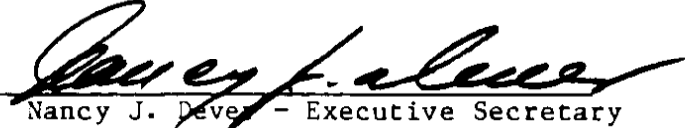
Given the previous rulings on this issue involving the same two parties and given the facts of this case, this claim must be sustained in part. Since the record reveals that the Claimant did work eight hours on the date in question, he will only be awarded the difference in pay between what he should have received and what he did receive.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1992.