

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30028
Docket No. SG-30653
94-3-92-3-444

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Norfolk Southern Corporation (former Central
(of Georgia Railroad Company)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk Southern Corporation:

Claim on behalf of Signal Maintainer M.E. Glenn, headquarters Payne, GA, assigned working hours 8 AM to 4:30 PM Monday thru Friday, rest days Saturday and Sunday, for the following:

- (a) Carrier violated the Signalmen's Agreement, particularly Article 6 and 10 (b) of the Vacation Agreement when they distributed more (sic) 25% of the Vacationing employee R. Hodges assignment (27 hours) to Signal Maintainer M.E. Glenn and did not provide a vacation relief employee for the week of March 18, 1991.
- (b) Carrier now be required to compensate Signal Maintainer M.E. Glenn for 27 hours at his overtime rate of pay because more than 25% of Vacationing employee's work load was distributed to him in addition to his other duties as Signal Maintainer at Payne, GA, instead of providing a Vacation Relief worker, and because this overburdened the remaining employees who were not on vacation." Carrier File SG-ATLA-91-5. GC File CG-491. BRS Case 8726-CofGA.

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The Organization argues that when a Signal Maintainer was observing one week's vacation in March 1991, a vacation relief employee was not provided, and that more than 25 percent of the work load of the Maintainer's position was distributed to another employee. It contends that this action was a violation of the National Vacation Agreement. Carrier contends that the vacationing Signal Maintainer's assignment was filled by an Assistant Signal Maintainer, who was paid sufficient overtime compensation to bring his rate up to that of a Signal Maintainer, thus, a relief worker was indeed used on the vacation vacancy, and in such circumstances the proscription against distributing more than 25 percent of the work load of the vacationing employee to others is not applicable.

The key to this matter is a determination of whether an Assistant Signal Maintainer was indeed used to fill the assignment during the vacation. If the vacancy was filled by an Assistant Maintainer, then no distribution of work occurred, as argued by the Organization, as the vacation relief employee was filling the vacancy. However, if the Assistant Maintainer was not used to fill the vacancy, then the evidence available supports a conclusion that more than 25 percent of the work load of the position was in fact performed by others, which would be a violation of the Agreement.

Carrier has argued that the Assistant Maintainer was used as the vacation relief for the Maintainer. It acknowledges that during the vacation period the Assistant Maintainer was not carried on the payroll at the Maintainer Rate, but instead, was credited with sufficient overtime to bring his rate up to that of a Maintainer. It contends that this procedure was consistent with the historical practice on the property. Carrier, however, offers no evidence to support its historical practice argument.

Rule 24 of the Agreement requires that when an employee is used to fill the place of another employee who receives a higher rate, the employee so used shall be paid the higher rate. Article 10 of the National Vacation Agreement provides that an employee designated to fill an assignment of another employee on vacation will be paid the rate of his own assignment or the rate of the higher assignment, whichever is greater. The higher rate requirements of both Rule 24 and Article 10 cannot be satisfied through the device of overtime payments of the type alleged to have been used here. If the Assistant Maintainer was actually used as a vacation relief for the Maintainer he should have been shown on

payroll records at the Maintainer rate. Accordingly, it must be concluded that Carrier has not established that the Assistant Maintainer actually filled the Maintainer's vacation vacancy. The claim has merit. It will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of February 1994.