

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30113
Docket No. SG-29985
94-3-91-3-388

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk and Western Railroad Company (N&W):

Case No. 1

- A.) Carrier violated the rules of the Signalmen's Agreement, in particular Rules 103, 304, 310(A), and Memorandum of Agreement effective February 1, 1984, when Carrier instructed Mr. Mitchell to suspend work on his regular assignment to perform work that has been historically and traditionally, by rule and past practice, the work of a Signal Test Man and was paid at the Signal Maintainer's rate of pay. This work consisted of testing relays as required by the Federal Railroad Administration on the Radford Division at Blake, Oakvale, and Ada, on April 12, 24, 25, 26, 27, and May 1, 2, 3, 15, 1990.
- B.) Carrier now pay Mr. Mitchell 8 hours at the Signal Test Man's rate of pay for each day listed above, a total of 72 hours, for the violation cited in part A." Carrier File SG-BLUE-90-3. G.C. File SG-BLUE-90-3. BRS Case No. 8466.N&W.

Case No. 2

"Claim on behalf of Richard M. Cline, Signal Test Man, Radford Division; assigned hours 7:00 AM to 4:00 PM Mondays through Fridays; meal period 12:00 noon to 1:00 PM; rest days Saturdays and Sundays, that:

- A.) Carrier violated the rules of the Signalmen's Agreement, in particular Rules 103, 304, and Memorandum of Agreement Establishing Regional Signal Maintenance Forces, effective February 1, 1984, when Carrier instructed Mr. J.K. Mitchell, Signal Maintainer, Signal Maintenance Force, to

suspend work on his regular assignment and perform work which has historically by rule and practice been performed by a Signal Test Man. On March 26, 27, 28, 29; April 3, 4, 5, 11, 16, 17, 1990, between MPN 344 and MPN 355 on the Radford Division, Mr. Mitchell performed Signal Test Man duties, which consisted of making field tests of relays as required by the Federal Railroad Administration and Carrier.

- B.) Carrier now pay Mr. Cline eight hours at the Signal Test Man's overtime rate of pay for each day listed - a total of eight hours - for the violation cited in part A. Carrier File SG-ROAN-90-11. G.C. File SG-ROAN-90-11. BRS Case No. 8464."

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.

This dispute involves two matters which will be reviewed separately. They both concern the testing of signal equipment, and the Organization cites the following Rules as applicable in both instances:

"Rule 103: Signal Test Man

An employee whose primary duties consist of the inspection and testing of signal systems, equipment and devices of the Signal Department on the territory to which assigned.

Rule 304

Absorbing Overtime

Employees will not be required to suspend work during regular working hours to absorb overtime.

Rule 310

(a) When employees are required to fill the place of other employees receiving a higher rate of pay they shall receive the higher rate; . . .

Memorandum of Agreement, February 1, 1984

. . .

(c) Employees assigned to positions on Regional Signal Maintenance Forces will perform assigned duties over the entire geographical seniority region. These employees will perform signal maintenance on the regional to which assigned with the exception of tests and inspection as required by the FRA or the Carrier. Such employees may be used for vacation and other relief work."

In separate periods in April-May 1990, and March-April 1990, a Signal Maintainer in a Regional Signal Maintenance Force was assigned to work with a Signal Maintainer in the performance of specific tests. The Carrier contends that the Regional Signal Maintainer simply assisted his fellow Signal Maintainer without being responsible for the tests. The Organization argues that the regional Signal Maintainer was, in fact, assigned to test work. The Organization points to Rule 103 defining the position of Signal Test Man as well as the restrictions on the work of "tests and inspections" involved in the Memorandum of Agreement covering Regional Signal Maintainers.

Case No. 1

The Claimant herein is a Regional Signal Maintainer who, because of his assignment with another employee in work on testing relays, seeks pay at the Signal Test Man's rate. In support of this, the Organization points in particular to the restrictions in the February 1, 19894 Memorandum of Agreement.

The Organization also relies on Rules 103 and 304, but the Board finds these of no support. Rule 103 simply defines the "primary duties" of a Signal Test Man, without more. Rule 304 is not applicable here. While the Claimant was required to "suspend work" on his own assignments, it clearly was not to "absorb overtime" as this is generally construed.

In defense of its position, the Carrier notes that the Claimant was only called upon to "assist" in the test work and relies on Public Law Board No. 4433, Award 24A, B, C, and D, and 30, involving similar situations on an affiliated property. These denial Awards noted that the function of "testing" equipment was within the Scope Rule applicable to the claimant. The Board notes, however, that these Awards make no reference whatsoever to anything comparable to the February 1, 1984 Memorandum of Agreement, which is clearly at point here.

More directly of significance is Third Division Award 29599. This Award makes direct reference to the Memorandum of Agreement, which states as to Regional Signal Maintenance Forces:

"These employees will perform signal maintenance on the Region to which assigned with the exception of tests and inspections as required by the FRA or the Carrier."

The Board finds, as it did in Award 29599, that this provision is clear and unambiguous and conformance thereto is required. Award 29599 further states, "while it maintained that the regional employee only assisted the local employees in the testing, the Carrier provided no support for making any distinction between assisting in the work and performing the work."

There is no basis for the Board to find to the contrary. Case No. 1 will therefore be sustained in principle, but the Board finds the remedy sought to be excessive. Since the Organization has demonstrated that the Claimant was assigned to work prohibited to him by the Memorandum of Agreement, the Claimant is clearly entitled to be compensated at the Signal Test Man's pay rate, and the Award directs that he be paid the difference between such rate and what he received for the claimed hours. Given all the circumstances, the Claim for full additional pay at premium rate goes beyond a reasonable remedy.

Case No. 2

This involves a similar situation on different dates, wherein no Claim is made on behalf of the Regional Signal Maintainer who assisted in testing work. Rather, the Claim is on behalf of a Signal Test Man who contends that such work should have been assigned to him. The Claimant was, however, performing duties in his own classification at the time, and there is no showing that he is entitled to all testing work (including assistance) to the exclusion of all others.

A W A R D

Case No. 1 sustained in accordance with the Findings.

Case No. 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 4th day of April 1994.