

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30240  
Docket No. SG-29896  
94-3-91-3-349

The Third Division consisted of the regular members and in addition Referee James E. Mason 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 of the Norfolk and Western Railway Company:

Claim on behalf of Mr. T. H. Robinson, Signal Maintainer, Front Royal, Virginia; assigned hours 7 a.m. to 4 p.m. Mondays through Fridays; meal period 12 noon to 1 p.m.; rest days Saturdays and Sundays, that:

- A.) Carrier violated the rules of the Signalmen's Agreement, in particular Rules 103, 108, 304, 310, when Carrier instructed Mr. Robinson to suspend work on his regular assignment and perform duties which have historically by rule and practice been performed by a Signal Test Man and paid Mr. Robinson the lower (Signal Maintainer's) rate of pay. On February 20, 28, and March 1, 5, 13, 1990, on the Shenandoah Division, Mr. Robinson performed Signal Test Man duties, which consisted of making field tests of relays as required by the Federal Railroad Administration.
- B.) Carrier now pay Mr. Robinson eight hours at the Signal Test Man's rate of pay for each day listed - a total of forty hours - for the violation cited in part A. Carrier File - SG-ROAN-90-6. G.C. File - SG-ROAN-90-6. BRS Case No. 8463.N&W."

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 employe 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 Rules of the Agreement which are of concern in the consideration of this claim are as follows:

"Rule No. 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 No. 108  
Signal Maintainer

An employee assigned to a designated section or territory to perform work generally recognized as signal maintainer's work. Signal maintainer's work referred to herein primarily consists of the inspection, test, adjustment, repair and maintenance of all signals, interlockers and other signal apparatus and devices on the employee's assigned section or territory.

Rule No. 304

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

Rule No. 310

When employees are required to fill the place of other employees receiving a higher rate of pay they shall receive the higher rate; but if required to fill temporarily the place of another employee or position receiving a lower rate, their rate will not be changed. Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of the rules in this agreement."

From the case file, we find that Claimant, while working on his regular assigned Signal Maintainer position within the assigned territory and scheduled hours of his regular position, was required on the five claim dates to perform certain relay testing work. There is nothing in the case file from either party to the dispute which identifies the amount of time involved in making these relay tests. Rather, the claim as initially presented and progressed on the property asks for payment of "eight hours at the Signal Test Man's rate of pay for each day listed - a total of forty hours . . . ." It is not clear in the case record whether this claim seeks eight hours on each claim date in addition to the regular Signal Maintainer's pay already allowed or if the claim is for the difference in rate of pay between the Signal Test Man's rate and the Signal Maintainer's rate for the eight hour tour of duty of the Claimant on each claim date.

The Organization, in its progression of this claim, has alleged that relay testing such as was performed by Claimant in this instance has historically been performed by Signal Test Man positions. It contends that Claimant was required on the claim dates to fill "the place of a higher rated employee." It states that Claimant "performed the work that previously had been assigned to and classified as a Signal Test Man." It points with favor to Carrier's alleged admission in the initial denial letter dated June 19, 1990, that "such testing of relays is generally recognized as signal work and it was done so in accordance with Rule 103." It argues that Claimant was required to fill the place of a higher rated position and therefore must have been required to suspend work on his regular assignment to absorb the work of the higher rated position. It does not, however, identify any Signal Test Man position which actually existed on this territory either at the time of the claims or previously.

In support of its contention concerning the alleged historical performance of relay testing by Signal Test Man positions, the Organization presented four statements from Signal employees each of which indicated to varying degrees that Test Men have tested relays and that generally Signal Maintainers are usually not qualified to perform such testing work. It is interesting, however, that one of the statements clearly admits that, "It has not been until the last few years that I, as a Maintainer, have been told to make or help make these tests."

For its part, Carrier argues that the work performed by Claimant on the claim dates was nothing more than signal work for which he was qualified to perform and which is comprehended by his Signal Maintainer's position. It contends that Claimant was not required to suspend work on his regular position to perform the relay testing but rather performed such work as part of his regular duties during his regular assigned tour of duty. The Carrier further argues that relay testing work is not, and never has been, the exclusive function of a Test Man and that the Organization has failed to prove otherwise. Carrier concludes by pointing to Awards of Public Law Board No. 4433 involving the same Organization and the Central of Georgia Railroad whose rules closely parallel those of this Carrier. That Board held that the performance of this type of signal testing work was not exclusively assigned to any particular class of Signal employees and was properly performed by a Signal Maintainer at the Maintainer's rate of pay.

From our review of the record in this case, it is our conclusion that Carrier's reference to Rule 103 in its initial rejection of this claim, on the basis of the subsequent on-property handling of the dispute, was nothing more than an inadvertent typographical error much the same as the Organization's inadvertent reference in its submission to the Board to Claimant performing the duties classified as a "Signal Inspector." The thrust of Carrier's on-property argument clearly indicates that its position is that Rule 108 - not Rule 103 - is governing in this case. It might be suggested that both parties could be more accurate in their use of Rule numbers and job titles to prevent this type of clerical error.

The Board is impressed with the similarity between the situation which exists in this case and that which was decided by Public Law Board No. 4433. While the principle of res judicata should be judiciously applied, especially where there are differences - even minor ones - in contract language and fact situations, we find the similarities in these two situations to be of sufficient consequence to permit us to adopt the logic expressed in Awards 24A, 24B, 24C, and 24D of Public Law Board No. 4433 as applicable in our determination of this case. The Organization has not shown by probative evidence or by convincing argument that relay testing is within the exclusive domain of a Signal Test Man position. Carrier was fully within its managerial right to have the Claimant Signal Maintainer perform testing work for which - in Carrier's judgment - he was qualified to perform without incurring the penalty of a higher rate of pay. The principle that Classification Rules such as 103 do not assign exclusivity of performance has been long recognized by the Board and is supported once more by this Award. See Third Division Awards 12501, 12668 and 17421 in support of this conclusion.

Inasmuch as the Organization as the moving party in this dispute has not shown by convincing evidence or argument that Claimant either filled the place of another higher rated employee or performed any work which was within the exclusive domain of another higher rated employee, there is no basis on which the Board could award him the higher rate of pay for performing only such work as is contemplated by his own classification of work rule within his own assigned territory during his own assigned tour of duty. Therefore, the claim in this case on the basis of this record is denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Linda Woods  
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.