

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32010
Docket No. SG-32314
97-3-95-3-151**

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

Claim on behalf of K.S. Falls for payment of 2.5 hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Appendix 'P' and the Scope Rule, when it utilized a non-agreement official instead of the Claimant to assist with a trouble call at Ward Road, on the Niagara Branch, on August 23, 1993. Carrier's File No. SG-778. General Chairman's File No. RM2574-225-494. BRS File Case No. 9538-CR."

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 were given due notice of hearing thereon.

The Claimant in this case was assigned to a position of Signal Inspector with a tour of duty from 7:00 A.M. to 3:30 P.M. daily except Saturday and Sunday. The claim as presented on his behalf by the Organization alleges that he was denied a work opportunity on Monday, August 23, 1993, which, they say, accrued to him under the provisions of Appendix "P" of the negotiated rules agreement, specifically Paragraphs #6 and #8 of said Appendix "P." It was not until October 19, 1994, after the case had been discussed and denied at the highest appeals level on the property that the Organization raised the additional argument relative to an alleged violation of the Scope/Classifications Rule.

The fact situation in this dispute is reasonably clear and straightforward. At approximately 2:30 P.M. on August 23, 1993, a trouble situation involving automatic crossing gates was reported. The Maintainers on duty whose tour of duty extended from 7:00 A.M. to 3:30 P.M. was dispatched to investigate and correct the situation. His Investigation revealed that a defective rectifier was the cause of the problem and had to be replaced. The Maintainer requested that a new rectifier be delivered to him at the job site. At the same time, he requested that an Inspector also come to the job site in compliance with Carrier's Signal Department procedures, C&S 31, Section 19, Part 19.2, which provide that someone in a supervisory capacity will be on hand to check the signal system at any time when more than one wire is cut or disconnected. Carrier dispatched a non-agreement C&S Supervisor to deliver the new rectifier and to oversee the installation and repair operation. The Maintainer performed all of the actual work necessary to replace the rectifier. The performance of such work resulted in 2.42 hours of overtime pay for the Maintainer.

The position of the Organization centers around Appendix "P" and the Scope/Classifications Rule. They argue that none but agreement-covered employees are permitted to perform agreement-covered work. They insist that inasmuch as Claimant's name was included on the Appendix "P" call list, he should have been called on an overtime basis in this situation. They contend that because of the fact that he was included on the Appendix "P" call list, he had a contractual right to be the supervisor contemplated by the C&S procedures. They further state, without any supporting evidence, that by practice "when the section maintainer needs supervision . . . the supervision notified was his immediate supervisor as per the BRS Agreement . . ." In support of these contentions, the Organization cites Third Division Awards 31428 and 28231.

For its part, Carrier relies on the premise that Appendix "P" is not applicable in this situation inasmuch as the on-duty Maintainer was assigned to the repair task during this regular work hours and not on an overtime basis; that Appendix "P" is applicable only to Maintainers and not to Signal Inspectors; that only the Maintainer performed any actual Maintainer's work on the claim date; and that there is nothing in the rules agreement or elsewhere which dictates that only agreement-covered Signal Inspectors may oversee the performance of work being done by a Maintainer. Carrier cites Third Division Awards 29165 and 25546 in support of its position in this regard.

After considering the several arguments and citations of authority advanced by the parties, the Board concludes that the work in question was Maintainer's work and was, in fact, performed by the on-duty Maintainer. The assignment to the specific work task occurred during the Maintainer's regular tour of duty and did not involve the calling of employees for work outside of their regular working hours. The specific work task did not trigger any of the call-out provisions of Appendix "P."

It must be noted, however, that Carrier's argument relative to the inapplicability of Appendix "P" to the Signal Inspector is not entirely correct. It is undisputed in the case record that Claimant's name was listed on the Appendix "P" call list. Therefore, when or if the provisions of Appendix "P" are properly applicable to a given fact situation, then the names as included on the call list must be utilized in accordance with the requirements of Paragraph #8 thereof. In Third Division Award 31428 involving a similar situation, we read:

"... once an employee is placed on the overtime list, the employee is entitled to be called."

That Award went on to conclude that even though the employee could have been left off the overtime list, he was not. Therefore, inasmuch as the Signal Inspector's name in this case was, in fact, on the overtime list, he was entitled to be called for work which was properly covered by Appendix "P."

As for the Organization's argument relative to the use of an agreement-covered Inspector to oversee and supervise the work of the Maintainer, the Board is of the opinion that the classification definitions which are contained within the Scope Rule are not absolute reservations of work nor are they job descriptions which exclusively preserve certain duties to the agreement-covered Inspector to the exclusion of non-

agreement Supervisors. The opinions expressed in Third Division Awards 25546 and 29165 support this conclusion. In this case, the Supervisor performed no actual Maintainer's work. The use of the non-agreement Supervisor in this situation did not violate any of the Claimant's rights under the Agreement.

On the basis of the totality of evidence as found in this case record, there is no justification for the claim as presented. Therefore, it is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of May 1997.