

**Award No. 6003**  
**Docket No. 5780**  
**2-CSS&SB-EW-'70**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

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**PARTIES TO DISPUTE:**

**RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO**  
**(Electrical Workers)**

**CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That the Chicago, South Shore and South Bend Railroad violated the current agreement when they used a Foreman to perform Signalmen's work on June 9 and June 13, 1968.

2. That the Chicago, South Shore and South Bend Railroad be ordered to pay Signalman Raymond Kaiser an additional four (4) hours' pay at the straight-time rate of pay for each of the following dates: June 9 and June 13, 1968.

**EMPLOYEES' STATEMENT OF FACTS:** The Chicago, South Shore and South Bend Railroad, hereinafter referred to as the carrier, employs a group of electrical workers classed as signalmen, who are assigned to perform all work on signal equipment on the carrier's property. In this group is Signalman Raymond Kaiser, hereinafter referred to as the claimant.

On June 9, 1968, about 1:00 A.M., a flashing light signal at School Street, Michigan City, Indiana, was damaged as the result of an accident with an automobile and Train No. 239. On June 13, 1968, during the early evening rush hour, all trains were stopped due to a malfunction of signals between Tamarek and Sheridan, Indiana.

On both June 9 and June 13, 1968, Foreman Charles Wiseman was used to make repairs to the signal equipment.

The carrier has the signal maintenance divided into four (4) territories. The claimant is regularly assigned to Territory No. 1, Signalman Smith is regularly assigned to Territory No. 2, and Signalman Morris is assigned to Territory No. 3.

Signalman Smith, Territory No. 2, was on vacation June 9 and June 13, 1968. The claimant, Territory No. 1, and Signalman Morris, Territory No. 3,

were assigned to handle the work on Territory No. 2 while Signalman Smith was on vacation.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including carrier's highest designated officer, all of whom have declined to make satisfactory adjustment.

The agreement between Local Union No. 1392, International Brotherhood of Electrical Workers, and the Chicago, South Shore and South Bend Railroad, effective November 1, 1964, is controlling.

**POSITION OF EMPLOYEES:** The work performed by Foreman Charles Wiseman on June 9 and June 13, 1968, is clearly signalmen's work as spelled out in Rule 54 of the current agreement.

The first paragraph of Rule 54 reads as follows:

Signalmen's work shall consist of the assembling, installing, removing, maintaining, dismantling, repairing, rebuilding, wiring, inspecting and testing of all signal equipment used in all automatic block signals, train order signals, crossing protection gates or signals, switch lights, interlocking plants, parking lot gates, smash gates, electrical insulation in insulated track joints, car retarder systems, automatic train control systems, central traffic control systems, hot box detector systems and train annunciator systems."

Rule 24 reads as follows:

"None but mechanics or apprentices regularly employed as such, shall do mechanic's work as per special rules of each craft.

This does not prohibit foremen in exercise of their supervisory duties to perform work."

Foreman Wiseman was not performing supervisory duties at the time of these two incidents, but merely taking the place of and performing the duties of a Signalman.

The carrier points out in their letter of denial, under date of August 27, 1968, that "there is a letter of understanding which provides that the 'Signal Foreman' may work when he is supervising three or less men." In the instant case, Foreman Wiseman was supervising no one and, therefore, the mutual understanding above referred to, is not applicable to this case.

The carrier also points out in their letter of denial that Article 6 of the vacation agreement "provides that the work of vacation employes can be distributed among two or more employes in the same occupational classification." We agree this is correct and the work on Territory No. 2 was "distributed" to the occupants of Territory No. 1 and Territory No. 3, and they are of the same occupational classification, namely, Signalmen.

We do not agree that the work of a vacationing Signalman can be divided or "distributed" to employes in two different occupational classifications, namely, Signalmen and Foremen.

It is clear that the work in question was assigned to the claimant during the absence of Signalman Smith. The carrier violated the provisions of the current agreement when they used the foreman to perform the work in question in lieu of calling the claimant to perform same.

In view of the facts and the employes' position in this case, we respectfully request this Honorable Board to sustain the claim of the employes in its entirety.

**CARRIER'S STATEMENT OF FACTS:** The issue in this dispute is the application of the agreement in emergency Signalmen's work during period of regular assigned signalman's vacation.

There exists on this carrier four signal maintainers, assigned as follows:

Section	Territory	Assigned Employee
No. 1	South Bend to Andry	Ray Kaiser
No. 2	Andry to Wilson	H. Smith
No. 3	Wilson to Durbin St. (Gary)	Lee Morris
No. 4	Durbin St. (Gary) to Kensington	Earl Will

In addition, there is a signal crew of five men, with Foreman Charles Wiseman, employed in heavy maintenance and construction over the entire line in the summer season. The balance of the year, signal crew consists of three men and foreman.

H. Smith, assigned signalman in Section No. 2, was on vacation on the days in question. When a signalman is on vacation, work on his section is normally left to accumulate, except for weekly check of highway grade crossing protection and report of signal failure which, during assigned hours, is performed by signalmen from other sections. Emergency work is performed by the first available man qualified in the electrical craft.

On Sunday, June 9, 1968, at about 1:00 A. M., the flashing light signal at School Street, Michigan City, was damaged by an accident with an automobile and Train No. 239, creating an emergency. The flashing light signal was reported to be blocking the single main track at this location.

On Thursday, June 13, 1968, during the early evening rush hour, all trains were stopped by red signals between Tamarack and Sheridan. Operating rules require trains to stop and conductor to get a train order to proceed by red home signal.

Charles Wiseman, foreman, was the first accessible qualified man available within the craft for emergency work, and used according to the agreement.

The distance from the home of signalman assigned to Section No. 1 to No. 1 point, School Street, is 15 miles, and to No. 2 point, County Line Road (about half-way point between Tamarack and Sheridan) is 17.5 miles.

The distance from the home of signalman assigned to Section No. 3 to No. 1 point is 21.4 miles and to No. 2 point is 18.6 miles.

The distance from the home of the foreman to No. 1 point is 1.3 miles, to No. 2 point, it is 4.0 miles.

**POSITION OF CARRIER:** This is a 90-mile railroad and operates 51 passenger and 15 freight trains week-days, 60 miles of which is single track, and 34 passenger and 10 freight trains week-ends, carrying about 11,000 passengers, accounting for 8,000 people during the four-hour rush period.

To insure safe, efficient operation, it is the practice of this Carrier to dispatch first available men to correct any emergency deficiency.

There is an agreement in effect between Chicago South Shore and South Bend Railroad and the International Brotherhood of Electrical Workers, Local Union No. 1392.

This claim is based on alleged violation of Rule No. 24 of the agreement, reading as follows:

"RULE 24.

ASSIGNMENT OF WORK

None but mechanics or apprentices, regularly employed as such, shall do mechanic's work as per special rules of each craft.

This does not prohibit foremen in exercise of their supervisory duties to perform work."

There is also a letter of understanding agreed upon October 3, 1962 pertaining to the Foreman in question, reading as follows:

"Pertaining to the existing agreement between the Chi. So. Shore & So. Bend R. R. Co. and Local Union No. 1392, I.B.E.W. Appendix 'A', Basic Rate of Pay dated September 8, 1961 'Classification' Way and Structure Dept. 'Signal Foreman' it is understood that the 'classification of work' for this job classification is interpreted (where no specific rule now exists), as follows: 'Foremen and temporary Foremen may not work with tools unless clearly necessary to insure the safety of men in their charge, or unless he is supervising the work of three (3) or less men. All men rated as foreman shall be permitted to issue material requisition and prepare Foremen daily time reports.'"

During regular working hours this foreman did, on the dates in question, supervise more than three men; however, when performing casual overtime emergency work on the dates in question, he was compensated on an overtime basis and did not supervise anyone.

This casual overtime emergency work occurred in the territory assigned to an employe on vacation. Article VI of the vacation agreement says, in part, ". . . the vacation system shall not be used as a device to make unnecessary jobs for other workers."

The emergency work occurred in an assigned vacation employe's territory. The work was not assigned to Raymond Kaiser. As provided in the vacation agreement, this work should be, and is, assigned to more than one employe.

In view of the exigency of the situation, we hold that Charles Wiseman, Signal Foreman, permitted to be a working foreman when supervising less than three men, was the first available man within the craft to perform work created by an emergency.

For these reasons, the Carrier respectfully submits that the Board deny the claim.

**FINDINGS:** The Second 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.

In delineating the jurisdictional boundaries of each of the Divisions of the National Railroad Adjustment Board, Section 3, First (h) of the Railway Labor Act allocates to the Second Division jurisdiction over disputes involving electrical workers. Similarly, said provision confers jurisdiction on the Third Division as regards disputes involving signalmen.

Notwithstanding that claimant is represented by Local Union No. 1392, International Brotherhood of Electrical Workers, and is subject to and governed by the labor contract between Carrier and the Electrical Workers, the circumstance that he is a signalman, and not an electrical worker, precludes this Division from adjudicating this claim.

Once this Division is put on notice that the matter is outside its province it must proceed on its own motion to dismiss the claim for want of jurisdiction. This is the proper course, even though the parties themselves have not raised this point on the property. See Award No. 12223, National Railroad Adjustment Board, Third Division.

#### **AWARD**

Claim dismissed without prejudice.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **SECOND DIVISION**

**ATTEST: E. A. Killeen**  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1970.