

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Air Line that:

(1) The Carrier violated the Signalmen's agreement when on October 29 and November 18, 1947, it farmed out, removed, or otherwise arranged or assigned generally recognized signal work to persons not covered and who held no seniority rights under the provisions of the Signalmen's agreement, when a section foreman and his five laborers performed signal work in handling and setting poles in the signal transmission line at mile posts 209.4 and 223.2.

(2) Messrs. H. J. Edge, E. L. Campbell and G. A. Harrington, Signal Maintainers, C. W. Egerton, D. E. Winfrey, and C. B. Huey, Signal Helpers, and C. M. Benoy, Assistant Signal Maintainer, by reason of the above violation of the Signalmen's Agreement, be compensated at their proper rate of pay on the basis of time and one-half for an amount of time equivalent to that worked by employees not covered by the Signalmen's agreement while performing this signal work. That each employe involved shall receive his proper share of the total time worked by the section foreman and his five men who were not covered and who hold no seniority or other rights under the Signalmen's Agreement.

EMPLOYEES' STATEMENT OF FACTS: When the instant violations occurred there was an alternating current signal system on that portion of the Seaboard Air Line which was served by a signal transmission pole-line. To meet the Carrier's needs, it was necessary for this signal pole-line to be raised.

Signal Supervisor E. E. Staples made arrangements with his signal maintenance force and the Division Engineer to have the signal and maintenance of way forces on hand at 8:00 A. M. on October 29, 1947 to perform the necessary work in connection with raising the signal transmission pole-line at Mile-post 209.4. In due time the Section Foreman received instructions from the Roadmaster to assist in the performance of this signal work.

Upon Signal Maintainer Campbell's arrival at Cameron, N. C. (mile-post 211), the section force, consisting of the Section Foreman and five laborers, loaded poles on a push-car and hauled them to mile-post 209.4, where the signal pole-line was to be raised. Section forces then unloaded

knowledge of the Carrier. While the Carrier had no objection to this being done, it is indicative of the fact that this manner of working resulted from a practice of both parties to the agreement. Certainly the Carrier is due a reasonable notice when employees decide to no longer go along with a given practice under an agreement if such is contrary to the agreement in order that proper consideration could be given to such notice in preventing any penalties from being imposed on the other party. In this particular case the Carrier had no advance notice and was not aware of the position taken by the Employees until after the work was completed at the 209.4 M. P. on October 29, 1947.

If irrespective of what is said above this claim should be sustained by your Honorable Board, the claimants would be entitled to recovery at the straight time rate only since it is a well settled principle of the Adjustment Board that penalty time will not be allowed for time not actually worked. (See Third Division Awards 5444, 5607 and 5900).

The Carrier asserts that on the basis of the foregoing this claim should be denied. The substance of all matter contained herein has been made known or is well known to the petitioners.

OPINION OF BOARD: Prior to the filing of this claim, the Carrier for many years followed a practice of using section laborers to assist signalmen. After this claim was filed, it discontinued such practice and finally denied the claim for pay on September 8, 1949. Over three years elapsed before the claim was processed to this Board and there is no showing as to the reason for such delay. We are required to say that the denial of the claim became final when the organization failed to process it to this Board within a reasonable time. See Award No. 4941.

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

That the parties to this dispute waived oral hearing thereon;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 16th day of February, 1954.