Award No. 8187

Docket No. SG-7750

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: *Claim of the General Committee of the* Brotherhood of Railroad Signalmen of America on the Texas and Pacific Railway that:

(a) The Carrier violated the Signalmen's Agreement when *on March 6, 9, 10, 11, 12, and 13, 1953, it unilaterally suspended* the regular assigned classified work of one Foreman, three Signalmen, four Assistant Signalmen, and six Helpers at Abilene, Texas, and moved these employes at Big Spring, and used them to perform Western Union pole line work at Coahoma, Texas. (Names, Classifications, Rates of Pay, and total amount of each time claim are shown in Brotherhood's Statement of Facts.)

(b) *Each of the employes cited in part (a) of this claim be* reimbursed for all meal expenses accrued while working away from Abilene during period March 6 to 13, inclusive.

(c) Each of the employes cited in part (a) of this claim be compensated a day's pay at their regular rate for each and every day they were held and used away from their work at Abilene, Texas.

EMPLOYES' STATEMENT OF FACTS: On Monday, March 2, 1953, Signal Foreman F. B. Chambers, in charge of Signal Gang No. 1, was instructed to line up his work at Abilene, Texas, in order that it could be closed up Thursday, March 5, to be ready to move gang to Big Spring, Texas, *to perform line work exclusively for Western Union* Telegraph Company.

On Friday, March 6, 1953, Signal Gang No. 1 moved from Abilene, Texas, to Big Spring, Texas, for the purpose of performing Western Union line work at Coahoma, Texas. The work performed involved the setting of ten poles to raise the line for construction of two switches on an industrial siding. No signal wires or equipment of any description was involved in this work; it was Western Union Telegraph Company work exclusively, which *the Carrier had contracted to perform with its Signal Department employes.*

Fourteen Signal Department employes of Gang No. 1 were used to perform the work involved. Their names, classifications, rates of pay, and total amount of claim for each, are as follows:

It just wants them to have damages for not eating telegraph company meals, which were not guaranteed to them by any contract.

As Referee Paul Samuell said for this Board in Third Division Award 38:

> ". . . it was their opinion [the sponsors of the Railway Labor Act] . . . that the Adjustment Board has no jurisdiction of working rules and conditions, nor shall it determine what the working rules shall be, but that it shall have only the right of interpretation of whatever rules are agreed upon . . ."
>
> ". . . no interpretation of rules or agreement concerning working conditions is involved in this dispute . . ."
>
> ". . . To recognize this dispute from a jurisdictional standpoint would, in my humble judgment, open the door to future disputes which, under the cloak of a grievance, are in truth and fact working condition problems which are not governed by rules or contracts, and thus permit the Adjustment Board to supersede the functions and duties of the Mediation Board.
>
> "I therefore hold that this Board is without jurisdiction to consider the question . . ."

In Third Division Award 2983 (Mart J. O'Malley), the Board denied a somewhat similar claim by this same Brotherhood, saying:

> ". . . Section (b) of the claim requests that the rate of pay used by the contractor be used as a basis of an award in this case. This Board cannot create new rates for the employes coming under the contract of the Signalmen . . ."

And in Award 4292 (LeRoy A. Rader), this Board said:

> "On Item (b) of the claim, the legal rule involved is construed to be that this Board does not have the authority under the Railway Labor Act to award a rate of pay which has not been fixed by the collective bargaining process. This would be an invasion on the legal rights of the parties not authorized or contemplated under the applicable law involved."

Therefore, the Carrier submits that all three claims are without merit.

All known relevant argumentative facts and documentary evidence are included herein, but the Carrier requests permission to submit such additional evidence and argument as may appear appropriate after it has seen a copy of the submission by the organization.

All data submitted in support of Carrier's position has been presented to the employes or duly authorized representative thereof and made a part of the particular questions in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The confronting claim is presented in behalf of some fourteen employes covered by the Signalmen Agreement, in which reparations are sought to the extent of a day's pay for each named employe, for March 6, 9, 10, 11, 12, and 13, 1953, plus meal expense. It is alleged that the Scope of the effective Agreement and Rule 62 was violated when the employes covered were required to relocate certain pole lines belonging to the Western Union Telegraph Company. The Scope provision of the said Agreement and Rule 62 provide as follows:

SCOPE

> "This agreement governs the rates of pay, hours of service and working conditions of all employes in the Signal Department, ex-

cept supervisory forces above the rank of foremen, clerical forces and engineering forces, performing the work generally recognized as signal work, which work shall include the construction, installation, maintenance and repair of signals, interlocking plants, car retarders, highway crossing protection devices and their appurtenances, centralized traffic control systems, and all other work generally recognized as signal work."

"Rule 62. Except in extreme emergencies, employes covered by this agreement will not be expected to perform work of any other craft nor will employes of any other craft be required to perform work coming within the scope of this agreement. This does not apply to maintenance of electrical equipment on water pumps or to testing outside telephones during regular working hours."

The Organization took the position that the work in question that is, the relocation of certain poles and lines belonging to some one other than this Carrier, was work not coming within the Scope of the effective agreement, and thus was not work which could properly be required of Signalmen, particularly when the explicit prohibitions of Rule 62 were taken into consideration.

The Respondent took the position that while the work in question was admittedly not Signal work within the strict meaning of the Scope of the Agreement, no other employes of any other craft on the property were equipped or able to perform same. It was pointed out that generally speaking the removal and relocation of poles was of a type Signalmen were capable of performing and that there was no rule in the Agreement which precluded the assignment of work (during regular working hours) which is not covered by the Scope of the Agreement.

That the work with which we are concerned is not Signal work is admitted by both parties. The crux of the petitioners' position is that this Carrier is precluded from assigning any work, other than Signal work, and that the performance thereof (absent penalty) cannot be required of employes covered by the confronting agreement.

The Scope of this rule establishes the general type of work which shall thereafter inure to the employes covered by the agreement, and which the Carrier shall thereafter be required to assign to the specified employes of the Signal Department.

While this work does not come within the Scope of the Agreement there is no evidence of record that such work belongs to any other craft or that it was or had been performed by any other craft. Rule 62 was not, we believe, intended to cover facts and circumstances here present.

In Award 4572 we stated:

"The violation charged against the Carrier is the assignment of work not covered by the scope rule of the agreement to an employe covered by the agreement. The scope rule simply specifies the employes covered by the agreement and establishes the various types of work to which the covered employes are entitled and which the Carrier is required to assign to them. It does not, nor does any other rule of the agreement, prohibit the Carrier from assigning other duties to such employes."

This decisive principle is controlling here. The claim lacks merit.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes 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

That the Carrier did not violate the effective Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1957.