

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Frank J. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

GEORGIA RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Georgia Railroad that:

(a) The Carrier violated the current Signalmen's Agreement when it allowed Scope work to be performed by employees not covered by the current Signalmen's Agreement.

(b) The Carrier pay Assistant Signalman B. D. Davis for five hours and twenty-five minutes at his punitive rate, for work performed by track maintenance forces on January 31, 1956, between Lithonia, Ga., and Conyers, Ga.

BROTHERHOOD'S STATEMENT OF FACTS: On January 31, 1956, a Signal Gang under the supervision of R. D. Mitchell, Signal Foreman, was working between Lithonia and Conyers, Ga., doing necessary signal work in connection with changing locations of the signal equipment. A track maintenance crew, consisting of five men, was requested by C. S. Coggins, Supervisor Telephone, Telegraph, and Signals, to perform signal work of loading and hauling signal batteries, tubs, and other signal work coming under the heading of Scope in the current Signalmen's Agreement applicable on the property. The track forces were used from 9:00 A. M. to 9:35 A. M. and from 1:15 P. M. to 1:45 P. M. on January 31, 1956.

B. D. Davis, Assistant Signalman, assigned to the Signal Gang working between Lithonia and Conyers, Ga., made a claim for the time that was used by the track maintenance forces in the performance of the Signalmen's Scope work. The time amounted to five hours and twenty five minutes (5 men spent 35 minutes each in the morning, 9:00 A. M. to 9:35 A. M., and spent 30 minutes each in the afternoon, 1:15 P. M. to 1:45 P. M.) The total time, as shown above, that the track maintenance crew was used for performing Signalmen's Scope work amounted to five hours and twenty-five minutes. The claim by Mr. Davis was presented to C. S. Coggins, Super-

partment employes making all hitches. No protest had been made of this practice. There is very little of same, certainly not enough to warrant the expenditure of a large sum of money for a crane for signal department alone. In the movement in question the section foreman was only doing what would have been done by the crane, and had it been done by the crane no claim would have been made.

There is no desire on the part of the carrier to deprive signal department employes of work rightfully belonging to them. No one was deprived of anything in this instance. There were no employes furloughed when this incident occurred. The signal gang worked that day and were paid a day's pay. Claimant Davis lost nothing by the transaction and carrier gained nothing.

We do not understand how claimant arrives at the figure of 5' 25" as being time claimant was deprived of. The section gang consisted of a foreman and four men. Figuring 35" for each man would only give 2' 55" instead of 5' 25".

We can see no merit to this claim and respectfully request it be declined.

All data contained herein has been made available to Petitioner.

OPINION OF BOARD: Claimant is an assistant signalman on a signal gang apparently working between Lithonia and Conyers, Georgia on January 31, 1956. Normally a roadway department crane moved signal foundations and battery tubs. It broke down on January 31, 1956 and could not be fixed until the next day. To keep the job going the Signal Supervisor had a track maintenance crew of five men assist in hauling battery tubs from one location to another. This took approximately thirty-five minutes. On the same afternoon in a place called Social Circle, not mentioned in the claim, the signal gang was unloading some signal material from freight cars to the Freight House. It was raining and section gang laborers were on the platform out of the rain. At the direction of the Section Foreman the five laborers in the gang assisted in unloading the signal equipment. They worked thirty minutes. The claim was denied.

The claim asks for punitive pay for claimant for five hours and twenty-five minutes for work performed by track maintenance forces "between Lithonia, Ga., and Conyers, Ga."

The Carrier contends that the part of the claim based on the work done by the laborers at Social Circle cannot be considered by the Board because it was not a part of the claim which is literally limited to work done between Lithonia and Conyers. The organization contends the claim contains two violations and was so handled on the property.

The Carrier relies on Circular No. 1, the Board's Rules of Procedures which requires:

"Statement of Claim. Under this caption the petitioner or petitioners must clearly state the particular question upon which an award is desired."

Here the particular question stated in the claim upon which an award is desired is for punitive pay for allegedly letting laborers do signalmen's work.

It is clear from the handling on the property that the issue was the same but the alleged violation occurred in two different places. The Carrier was not misled. Moreover, this Board would be hypertechnical if it did not consider the claim here when it is realized that in Federal courts a complaint (similar to a claim) can be amended to conform to the facts developed at trial not only after judgment but even upon appeal in the Circuit Court of Appeals.

Furthermore, the awards cited by the Carrier are distinguishable for they involve instances where a claim stated one issue and it was sought to argue a new issue not within the statement of the claim. See Awards 8426, 6954 and Second Division Award 2664. Therefore, the claim as to the alleged violation at Social Circle is properly before the Board.

With respect to whether the disputed work is exclusively signal work the Carrier maintains that inasmuch as the Organization has not pointed to anything specifically in the scope rule which classifies the work as signal work its conclusions are mere assertions and thus the Organization has failed to sustain its burden of proof.

In determining to what class or craft work belongs the determining factor is the reason for the performance of the work. Award 3638. In Award 5046, the Board said:

"But work in connection with the movement of such materials from a warehouse or material yard to a signal construction or maintenance job for immediate use on such job is the exclusive work of signalmen."

Here in one instance relocation of signal equipment was involved, in the other case the signal equipment was being delivered along the Carrier's line for use in the Signal System. Indeed, the Carrier admitted the work in question was signalmen's work. Under such circumstances, the work involved was the exclusive work of the Signalmen.

The Carrier contends that the work done by section gang at Social Circle was done at the voluntary direction of the section foreman without direction or authority from the Carrier and thus cannot be the basis of a claim. Since the work was done at the direction of an authorized agent of the Carrier and there is no evidence that he lacked the requisite authority the contention is without merit.

The Carrier contends that the Claimant was on duty at the time of the alleged violations, that he was paid and therefore suffered no damage. It asserts that the claimed payment would thus be a penalty and is beyond the power of the Board to grant. In Award 9813 the Board held:

"Carrier next contends that the Claimant suffered no monetary loss and that the work done by Mr. Hoyle was negligible. This claim is primarily to enforce the scope of the Agreement and not for work performed. Employees who have lost work should be made whole, but where Agreement is breached claim is primarily to enforce the scope of the Agreement and not for work performed."

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 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

That the Agreement has been violated.

AWARD

The Claim is allowed at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of September, 1961.