

Award No. 10231

Docket No. SG-9929

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

D. E. LaBelle, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chicago, Rock Island and Pacific Railroad Company that:

(a) On October 5, 1956, the Carrier arbitrarily, capriciously, wholly without cause, and in violation of the agreed-to practices and the Signalmen's Agreement, strictly in abuse of its discretion, charged W. J. Vossen and T. F. Johnson with violation of Rule N, and V. K. Bevan with violation of Rules N, 426 and 428 of the Carrier's Rules and Instructions for Maintenance of Way and Structures, for what it erroneously alleged was falsifying the payroll and other report irregularities, which charges were proven to be fully erroneous, unwarranted, and unjustified at the investigation held on October 17, 1956.

(b) Since the investigation fully exonerated the claimants of the charges placed against them, the Carrier now be required to clear the charges from their record, and since the Carrier's letter of October 30, 1956, and the contents therein were in strict violation of the provisions of the Signalmen's Agreement, it also be remanded and removed from the claimants' record. [Carrier's File Nos. PR-63590, PR-26171, and PR-30049.]

EMPLOYEES' STATEMENT OF FACTS: Prior to the adoption and signing of the August 21, 1954 Agreement on this property, which included among other things a time-limit provision, which necessitated a clarification of the filing and handling of claims on the property, it had always been the practice that signal employees fill out their time reports on this Carrier's Form G-86 and distribution of labor on Carrier's Form MW-32. They were filled out at the close of the first and last pay-roll period of each month; the original copies were sent to the Auditor of Disbursements, with a copy to the Supervisor of Signals and Communication.

On November 3, 1954, following the adoption of the August 21, 1954 Agreement, the General Committee of the Brotherhood of Railroad Signalmen of America on the Carrier, consisting of Messrs. Cope, Christian, Peterson, and Watkins, met with several of this Carrier's Personnel Department Officers and agreed as to how the agreement would function and how claims would be filed

It is hereby affirmed that all of the foregoing is, in substance, known to the organization's representatives.

OPINION OF BOARD: A hearing was had on the claim set forth in Paragraph (a) of the Statement of Claim starting October 17, 1956 in accordance with Rule 64 (a) and (b).

Following the investigation, Superintendent J. C. Cartland of the Carrier on October 30, 1956 wrote each of the Claimants identical letters reading:

"Investigation held at El Reno, Oklahoma, October 18th, 1956, developed that you submitted time payrolls and work distribution sheets for position and rates of pay for which you had no authority and which is not supported by the working agreement between the Brotherhood of Railroad Signalmen of America and this Carrier. In fact, you will note that Rule 1 specifically states, in part, that this work may be performed by Signal Supervisors and other officials of the company and is not to be interpreted as restricting testing and inspection by any other qualified Signal Department employe as a part of his regular duties and at his regular rate. This rule and intent is very clear and definite. The investigation also developed that Signal Maintainers are performing this work as a part of their regular maintenance duty.

In view of the fact that the investigation did develop that there was apparently some misunderstanding on your part with respect to method, in your opinion, of claiming a higher rate of pay, it has been decided not to assess discipline in this instance. However, in the future, if you feel that you are entitled to additional compensation under your agreement, such time should be claimed in a separate letter or memorandum and filed with your Signal Supervisor."

It is claimed by the Organization that a copy of said letter has been placed in the personal records of each of the Claimants.

The rules governing the Carrier and the Organization are clear covering investigation of charges against an employe and Rule 64 (a) was complied with and needs no further reference.

Rule 64 (b) reads as follows:

"Such investigation shall be held within ten (10) days from the date his immediate superior of the rank of at least Signal Supervisor has knowledge of the offense. Suspension pending investigation is not a violation of this rule; in such cases the investigation shall be held as promptly as possible but not later than five (5) days after employe is withheld from service. Decision will be rendered within ten (10) days after date investigation is concluded. The employe and his representative will be advised in writing of the decision."

The investigation required by such rule was held, but no decision was rendered within ten (10) days after date investigation was concluded. On October 30, 1956, the letter hereinbefore set forth from Superintendent J. C. Cartland was sent and, as hereinbefore set forth, copies thereof placed in the personal files of each of the Claimants.

It is the Claim of the Organization in behalf of Claimants, that the Claimants are entitled to exoneration and their records cleared of the charge set forth in (a) of the claim filed, pursuant to Rule 66 of the contract, because of the fact that no decision was filed within 10 days after date investigation was concluded.

Rule 66 reads as follows:

"If the decision at the original hearing or on appeal is in favor of the employe, his record will be cleared of the charge, and if suspended or dismissed because of such unsustained charge he will be reinstated for wage loss, if any, suffered by him, less other earnings."

The particular charges made here against the Claimant were serious as each was charged "with falsifying your payroll, and other report irregularities, first and second half of September, 1956." It is the Opinion of the Board upon a full examination of the record that the Carrier failed to substantiate these charges: it is our further opinion that the whole situation arose and developed due to mutual misunderstanding on the part of the Claimants and the Carrier of the method of claiming a higher rate of pay and these misunderstandings and differences should have resolved and disposed of on the property.

Inasmuch as no decision was made within ten (10) days of the hearing and the further fact that we feel the Claimants should have been exonerated of the charges filed, pursuant to Rule 66, herein granted, we feel the claim filed should be sustained.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December, 1961.