Award No. 11136
Docket No. SG-10872

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Missouri Pacific Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, especially the Scope Rule, when it allowed Maintenance of Way employes, who are not covered by the Signalmen's Agrement, to perform signal work in connection with the installation of highway crossing protection at Highway Route A, Archie, Missouri.

(b) The Carrier now compensate the members of Wichita-Joplin-White River Division Signal Gang #5 at their respective rates of pay for the number of hours spent by Maintenance of Way employes in performing the signal work referred to in paragraph (a) above. [Carrier's file VG-S 225-305 cc: 247-3642]

EMPLOYES' STATEMENT OF FACTS: On or about August 12, 1957, the Carrier began a project of installing new highway crossing protection at the junction of Route A and its tracks at Archie, Missouri. This project was referred to by the Carrier as State Project #Sg.-652(8), Mo. Pac. AFE 570408.

During the period from August 12, 1957 until September 12, 1957, inclusive, Maintenance of Way Gang No. 2 assisted Signal Gang No. 5 in performing signal work in connection with that project.

Inasmuch as the employes of Maintenance of Way Gang No. 2 performed signal work and are not covered by the Signalmen's Agreement, **General Chairman F. E. Shaver** submitted the following claim to **Superintendent H. B. Davis** on **October 10, 1957:**

"Subject—Installation of Highway Crossing protection at Mo.Pac.RR and Route A at Archie, Mo. State

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between The Brotherhood of Railroad Signalmen of America and The Missouri Pacific Railroad Company.

The parties held no conference on the property. Therefore the provisions of The Railway Labor Act have not been complied with. We are of the opinion that these provisions must be complied with before this Board acquires jurisdiction to consider the dispute on its merits.

For the foregoing reason, we find that this Claim should be dismissed.

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

That the parties waived oral hearing;

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 does not have jurisdiction over the dispute involved herein.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1963.

LABOR MEMBERS' DISSENT TO AWARD 11136
DOCKET SG-10872

Award 11136 is a serious miscarriage of justice and ignores the purpose for which this Board was established.

The record reveals that the Organization's representative on three occasions either requested a conference on the subject of the claim or reminded the Carrier that no conference had been granted. The Carrier persistently chose to ignore the request for conference. The Railway Labor Act places an equal responsibility upon both parties to grant conferences to the other in the handling of disputes; and upon receipt of request for a conference from the Organization's representative it became incumbent upon the Carrier to grant the request. This Carrier repeatedly failed to do.

The majorities decision dismissing the claim has the effect of penalyizing the employes for the Carrier's violation of the Act. No more serious miscarriage of justice could be perpetrated.

Award 11136 is in error; therefore, I dissent.

/s/ W. W. Altus

Labor Member