

Award No. 11799
Docket No. SG-11327

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

(a) The Southern Pacific Company violated the current Signalmen's Agreement, dated April 1, 1947 (reprinted August 1, 1950 including revisions), particularly the Scope Rule and Rules 13-50 and 70, when it assigned and/or permitted Mr. R. L. Hall, Assistant Signal Supervisor, who is not covered by the Signalmen's Agreement, to perform signal work on March 2, 1958, in connection with the moving of CTC machines from Beaumont to Los Angeles, California, on that date.

(b) The Southern Pacific Company now compensate Signalman L. B. Wells for fourteen and one-half (14½) hours at his overtime rate for March 2, 1958. [Carrier's File: SIG 152-54]

EMPLOYEES' STATEMENT OF FACTS: This Carrier's signal system includes a centralized traffic control (CTC) system that extends from Yuma, Arizona, westward to Los Angeles, California, and beyond, and which included train dispatching offices at Beaumont and Los Angeles (Beaumont is located between Yuma and Los Angeles.) Prior to March 2, 1958, the Carrier completed plans for consolidating the train dispatching offices at Beaumont and Los Angeles. This consolidation required considerable signal work, including the moving of the CTC machines from Beaumont to Los Angeles.

Signal construction and maintenance forces had installed and maintained the CTC system and had performed the necessary signal work in preparing for the moving of the CTC machines from Beaumont to Los Angeles.

The Carrier decided to move the CTC machines from Beaumont to Los Angeles on March 2, 1958, and issued written instructions to various signal employees between Los Angeles and Yuma. Those instructions have been reproduced and are attached hereto as Brotherhood's Exhibit No. 1.

The center column, headed "SIGNAL MAINTAINER", on the second page of the Brotherhood's Exhibit No. 1, includes Signal Maintainers between Yuma

In his letter to petitioner's General Chairman denying this claim (Carrier's Exhibit "B") Carrier's Assistant Manager of Personnel has given an example involving Signal Foreman J. A. Robinson whereby the latter, on the date of this claim stationed at Guasti in connection with the incident here under discussion, and so identified on the "Line-up" mentioned above (Sheet 2 of Carrier's Exhibit "C"), in his capacity as supervisor was required to go from Guasti to South Fontana to supervise a Signal Maintainer stationed at that point in the matter of getting a switch machine back into proper operation. Assistant Signal Supervisor Hall would have performed only his proper duties had the need arisen for his services in a similar situation.

Petitioner may not, by any authority known to Carrier, demand a penalty for work which was never performed based on the theory that had the work arisen (petitioner has thus far not contended that it did) an employee not covered by the agreement would have performed it. The Agreement provides for no such hypothesis.

Without in any way receding from its position that the claim here under discussion is entirely unwarranted and completely lacking in merit, attention is directed to the fact that the penalty here sought is at the overtime rate of pay. This Board has in a long line of Awards consistently held, with respect to penalty claims at the overtime rate of pay, that the contractual right to perform work is not the equivalent of work performed and has declined to sustain such claims — see this Division's Awards 7094, 7222, 7239, 7242 and 7316, to cite but a few.

CONCLUSION

The claim in this docket is entirely lacking in merit or agreement support and carrier requests that it be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier operates a centralized traffic control (CTC) system from Yuma, Arizona, to Los Angeles, California and beyond. Sometime prior to March 2, 1958, the Carrier decided to consolidate the train dispatching offices at Beaumont and Los Angeles. This required the moving of CTC machines from Beaumont to Los Angeles. It, necessarily, required some signal work.

On February 25, 1958 Carrier notified a group of Signal Maintainers and several supervisory employees that effective at 5:00 A.M. on March 2, 1958, the CTC system between Yuma, Arizona and Los Angeles, California would be placed on emergency control operations while the CTC machines were being moved from Beaumont to Los Angeles. A line-up of Signal Maintainers and the sidings where they were to be stationed was handed to all employees concerned. That line-up included five supervisory employees. Among these was Mr. R. L. Hall, Assistant Signal Supervisor, who is not covered by the Signalmen's Agreement.

Claimant states that he was available on March 2, 1958 and was not used because Hall allegedly performed work which rightfully belonged to him under the Agreement. He was originally paid the amount of the claim which he was

later required to return. He now asks that he be compensated for fourteen and one-half hours at the overtime rate.

Claimant reported such overtime work and was paid therefor on or about March 25, 1958. On April 22, 1958, Carrier's Signal Supervisor wrote to Claimant as follows:

"Semi-monthly time roll for first period March 1958 has been handed to me for signature and approval.

"It is noted that on March 2 you claim 14½ hours overtime at rate and one-half, and on the reverse side of Form 201, under 'Details of Overtime Worked,' you state 'Acc. Asst. Supvr. R. L. Hall working GMO 71311 Indio. Was available.'

"The purpose of this letter is to advise you that a deduction will be made from your second period April earnings covering this overpayment. Your posting of this claim in column headed 'Overtime — Rate & ½' indicates that you actually worked this time, which is not the case. It should have been placed in column headed 'Paid for but not worked.'

"Your claim for 14½ hours at overtime rate paid for but not worked for the reason that you allege that Assistant Signal Supervisor Hall was working at Indio when you were available, is denied. Assistant Signal Supervisor Hall was assigned a station on line at Indio with telephone connected to Dispatcher's circuits for the purpose of directing any emergency that might arise on his district.

"Please sign attached duplicate of this letter in the appropriate place, show date received, and return to me."

Carrier subsequently deducted the amount from Claimant's earnings.

On July 28, 1958 Carrier's Assistant Manager of Personnel wrote to Employee's General Chairman, in part, as follows:

"Our investigation has established that during the movement of the CTC machines all signal maintainers and signal foremen on the CTC territory between Los Angeles and Yuma were called and assigned a station on line. Assistant Signal Supervisors were also placed at designated points, from which position they could go to any location where conditions dictated a need for their presence. They were not placed at their respective locations in lieu of a signal maintainer and there were no signalman's duties performed by assistant signal supervisors or signal foremen. As an example, it was necessary for Mr. J. A. Robinson, signal foreman, to go from Guasti to South Fontana to supervise George Riddle, signal maintainer, in getting a switch machine back into proper operation."

There is no question but that Hall and the other supervisors are not covered by the Agreement. There is, however, no affirmative proof that Hall or any of the other supervisors performed signalmen's work. The burden of proof to show this fact is upon the Employees. This they have failed to do. Nowhere, on the property, do the Employees deny Carrier's position also made on the property, that the supervisors were not placed at their respective positions in lieu of signal maintainers and that they performed no signalmen's work. The instructions contained in Carrier's letter of February 28, 1958, and the line-up

attached thereto, alone do not establish the fact that the supervisors did signalmen's work. Employees do not deny that Carrier had every right to place supervisors at different locations.

The mere fact that Carrier erroneously had paid Claimant for alleged overtime work is not an acknowledgment by the Carrier that the claim is valid. The record conclusively shows that the Claimant reported the alleged work in a wrong column of the appropriate wage form, which easily mislead a payroll clerk. When discovered, it was immediately called to Claimant's attention. Such errors are common. They are not conclusively an acknowledgment of the merits of the claim.

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 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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1963.