

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 and 70, when it assigned and/or permitted Mr. H. A. Kinch, 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 Lead Signalman H. M. Shappard for eleven (11) hours at his overtime rate for March 2, 1958. [Carrier's File: SIG 152-56]

EMPLOYES' 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 the Brotherhood's Exhibit No. 1.

Rules 13 (Overtime), and 70 (Loss of Earnings) are in no way involved, since for those rules to become operative it must be shown that Assistant Signal Supervisor H. A. Kinch actually performed service to which employees of claimant's classification enjoyed an exclusive right. That has not been, nor can it be done. Assistant Signal Supervisor Kinch's activities on the date of this claim were entirely supervisory and at no time did he perform service to which he was not entitled. Petitioner's contention that he was standing by to perform signal maintainer duties should a need for them arise, instead of standing by to perform his own proper duties as a supervisor, is erroneous and is not supported by a shred of evidence.

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 Kinch 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 merely because petitioner contends that had the work arisen an employee not covered by the agreement would have performed it. The Agreement provides for no such penalty.

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: The facts and circumstances are identical in every respect with those involved in Award No. 11799. Only the Claimant and the supervisor involved are different.

We fully discussed all of the issues in Award No. 11799. Our conclusions remain the same.

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 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.