

Award No. 12145
Docket No. SG-11625

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al, that:

(a) Signal Foreman E. L. Crowe be paid for not less than eight (8) hours at the overtime rate, and in addition, be paid at the overtime rate for all hours beyond eight, that he was required to work on Saturday, August 9, 1958, when he was used to transport a trailer from Newport, Tennessee, to Danville, Virginia.
[Carrier's File: SG-12634]

EMPLOYEES' STATEMENT OF FACTS: Mr. E. L. Crowe was the regularly assigned Signal Foreman of a signal gang which was temporarily located at Newport, Tennessee, Foreman Crowe's gang was furnished the use of house trailers in lieu of camp cars. On Saturday, August 9, 1958, the signal gang moved from Newport, Tennessee, to Danville, Virginia, and all of the trailers, with the exception of one, were moved by contract. Signal Foreman Crowe was assigned and/or permitted by the Carrier to move the one trailer from Newport to Danville, and in view of this action General Chairman E. C. Melton, of the Brotherhood of Railroad Signalmen, wrote Mr. J. M. Stanfill, Signal & Electrical Superintendent, under date of August 22, 1958, as follows:

"It is my understanding that Foreman Crowe's gang (in trailers) was moved from New Port, Tenn., to Danville, Va., on Saturday, August 9, 1958, and the moving of trailers was by contract, except one trailer was moved by Mr. Crowe on what should have been a day off duty under the provisions of the agreement.

If my understanding is correct, and Mr. Crowe, Signal Foreman, was used on Saturday, August 9th, to transport a trailer from New Port, Tenn., to Danville, Va., or any other rest day, then he should be paid at the overtime rate of pay for not less than a full 8-hour day, and extra time beyond the 8-hour period, because the agreement, Rule 47, provides, among other things, that an earnest effort will be

by or on behalf of the employe involved to the officer of the Carrier authorized to receive same, **within sixty days** from the date of the occurrence on which the claim or grievance is based. Thus, the Agreement provides that the "employe involved" be named and that any claim not presented within sixty days from the date of occurrence on which it is based is barred and the Board has no jurisdiction over it.

In writing Carrier's Assistant Director of Labor Relations on December 31, 1958, the Brotherhood's General Chairman attempted to institute a new claim on behalf of Mr. Crowe for pay on August 10, 1958. However, the Assistant Director of Labor Relations advised the General Chairman in letter dated January 7, 1959 that any claim which he then attempted to assert on behalf of Mr. Crowe for pay on August 10, 1958, was barred by Article V of the Agreement of August 21, 1954 and that Carrier was not waiving application of that rule.

In event the Brotherhood should attempt to assert claim on behalf of Mr. Crowe for pay on August 10, 1958, the Carrier's position remains the same. There has not been any such claim presented in writing by or on behalf of Mr. Crowe for pay on August 10, 1958 to the officer of the Carrier authorized to receive same within sixty days from the date of the occurrence on which the claim is based (August 10, 1958), as required by Article V of the Chicago Agreement of August 21, 1954. Therefore, any such claim which the Brotherhood might attempt to assert on behalf of Mr. Crowe for pay on August 10, 1958, is barred and the Board has no jurisdiction over it and has no alternative but to dismiss it for want of jurisdiction.

CONCLUSION

Carrier has shown conclusively that:

(1) Claim here presented on behalf of Mr. Crowe for pay for an unspecified amount on Saturday, August 9, 1958, is not supported by the effective Signalmen's Agreement.

(2) Any claim which the Brotherhood might now attempt to assert on behalf of Mr. Crowe for pay on August 10, 1958, is barred by the plain language of the Agreement in evidence, the Board has no jurisdiction over it and, therefore, has no alternative but to dismiss it for want of jurisdiction.

Claim for pay for an unspecified amount on August 9, 1958, should be denied. Any claim for pay on August 10, 1958, is barred and should therefore be dismissed for want of jurisdiction.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant, a Signal Foreman, drove a Carrier owned truck with trailer attached from Newport, Tennessee, to Danville, Virginia, Sunday, August 10, 1958.

The Carrier, defending against the claim, contends that the claim is barred by the provision of Article V of the Agreement of August 21, 1954, asserting that the claim was not filed "within 60 days from the date of the occurrence on which the claim or grievance is based."

The essence of the claim is that the Carrier required and/or permitted the Claimant to perform a service on a rest day of his workweek and violated

the Agreement in declining to compensate the Claimant for that service. The filing on August 22, 1958, was well within the 60 days allowed.

In the absence of a showing of an understanding or agreement to the contrary between the Carrier and the employees' Organization, the Board has no alternative but to hold that the Claimant performed a necessary service for the Carrier on his assigned rest day and that, under the rules of the Agreement, should be paid as claimed.

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 of the parties 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 29th day of January 1964.