

Award No. 12401
Docket No. SG-11595

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Lehigh Valley Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, especially Article IV, Section 14, and Article V, Section 8, when, on July 30 and 31, 1958, it allowed signal maintenance forces to perform signal construction work on the Easton territory instead of recalling and using employees who had been laid off by reason of force reduction.

(b) The Carrier should now be required to compensate Mr. Philip Rocarro eight hours at the Leading Signalman rate, Mr. J. Schmidinger eight hours at the Signalman rate, and Mr. George Fech eight hours at the Signal Helper rate for each day listed in paragraph (a) above.

EMPLOYEES' STATEMENT OF FACTS: On April 10, 1958, the Carrier issued a notice abolishing various signal positions effective with the close of business on April 18, 1958. The positions abolished included all positions on a construction gang that had been working in the vicinity of Catasauqua, Pa.

On July 30 and 31, 1958, the Carrier required Leading Signal Maintainer H. Sandt, Signal Maintainer R. Kempsey and Signal Helper M. Sar, employees who had been assigned to signal maintenance positions, to perform signal construction work of installing new crossing protection on the South Side Branch at Easton. On those dates construction forces were on furlough.

On August 30, 1958, Mr. Thomas F. DeRose, Local Chairman, presented a claim to Mr. W. J. Varner, Signal Construction Engineer, as follows:

"The Local Committee has been directed to present this claim in behalf of Mr. Phillip Rocarro as Leading Signalman, Mr. J. Schmidinger as Signalman and George J. Fech as Signal Helper, for July 30 and 31, 1958.

Switches 35 and 39 controlling the loop track where engines are changed were worn to the point where they required renewing, and it was necessary to revise the control of these switches by wiring changes and relays in lieu of the worn equipment. The changes were made under traffic conditions, and testing was required before movement could be made by signal indication. Therefore, the work involved included changing and testing.

In this connection, I call your attention to the provisions of Article 2, Section 20, of the schedule agreement which provides that when higher rated employees are temporarily used to perform lower rated work, the employees will be paid the higher rate, and that is exactly what was done in this case. Even in view of this, I advised you that I would be willing to agree to an understanding for the future in cases of similar work and circumstances that would be a basis for determining what class of Signal Department employees would be used as between men working in construction and other classes, and I am still willing to do this if you desire.

Yours truly,

/s/ C. L. Wagner
Chief of Personnel"

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the agreement between the parties and to decide the present dispute in accordance therewith. The Organization in presenting this dispute seeks to obtain the equivalent of a new rule by asking this Board to sustain the instant claim in the absence of a rule to support it. In view of the many awards this Board has rendered against such action, we feel certain that the Board will not even attempt to do so. That this Board will not make agreements nor write rules has been decided in many awards. A few such awards of the Third Division are: 2029, 2612, 2622, 2744, 3244, 3737, 4270, 4304, 4322, 4386, 4819 and 5597.

In the handling of this dispute on the property, the Employees submitted no evidence to support their contention as set forth in this claim.

In conclusion, the Carrier respectfully reasserts that the instant claim is entirely without support under the governing agreement rules and should either be denied in its entirety or dismissed for the reasons previously set forth herein.

OPINION OF BOARD: Neither the agreement nor other evidence of record distinguish between work which may be assigned to maintainers and construction forces. Being thus without a guide, the Board finds that the claim must be denied.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of April 1964.