

Award No. 12404
Docket No. SG-12098

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 intent of Article 1, Sections 4, 5, 8, and 10 of the current Signalmen's Agreement, as amended, by using signal maintenance employees on May 14, 1959, under actual direction of J. F. Yerger and H. J. Peney, in installing relays, wiring, cable, indicators, etc. in a crossing watchman's shanty at West Portal, New Jersey, for use at a temporary crossing installed for use of contractors at the site of a new Federal highway bridge.

(b) The Carrier now compensate Philip Roccoaro one day's pay at Leading Signalman rate, A. H. Beatty one day's pay at Signalman rate, and Roy Azzalina one day's pay at Signal Helper's rate because of this violation. [Carrier's File: 809.1]

EMPLOYEES' STATEMENT OF FACTS: On May 14, 1959, the date involved in this dispute, Messrs. R. M. Frederick, H. W. Pittenger, and J. G. Bennett were the incumbents of the positions of Leading Signal Maintainer, Signal Maintainer, and Signal Helper, respectively, on the Bellewood, New Jersey, signal maintenance territory. On that date, the Carrier required these maintenance employees to suspend signal maintenance work and perform signal construction work. The construction work consisted of installing wiring, relays, cable, indicators, etc. for use at a temporary crossing installed for the use of contractors at the site of a new federal highway bridge. The work was new construction work, and no apparatus of this nature had ever previously existed at or near this location.

On June 13, 1959, Mr. C. T. Heitzman, Local Chairman, presented the following claim to Mr. W. J. Varner, Signal Construction Engineer:

"The Local Grievance Committee has directed me to present the following claim on behalf of Philip Roccoaro, 1 day's pay at Leading Signalman's rate; Andrew H. Beatty, 1 day's pay at Signalman's rate; and Roy Azzalina, 1 day's pay at Signal Helper's rate.

lower rated work receives the higher rate of pay. (Article II, Section 20, Schedule Agreement.)

In conclusion, Carrier urges that under the current agreement it was within its rights in having the work performed as alleged. The Employes have not on the property assumed the burden of proof which is rightfully theirs, and it is contended that they cannot assume the burden before this Division.

(Exhibits not reproduced.)

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 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 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.