

Award No. 12800
Docket No. SG-12077

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) The Carrier violated the current Signalmen's Agreement, as amended, particularly, the Scope, when, from about March 16 through April 13, 1959, it allowed and/or permitted persons who hold no seniority or other rights under the Signalmen's Agreement to perform work on the signal pole line for approximately twelve miles at or near Atlanta, Georgia, between Mile Posts 153.2 and 162.4 and between Mile Posts 631.9 and 634.9.

(b) The Carrier now be required to compensate the following signal employees at their respective rates of pay, on a proportionate basis, for all time worked by persons not covered by the Signalmen's Agreement while performing recognized signal work at or near Atlanta, Georgia, between March 15 and April 15, 1959:

Signal Maintainers J. E. Hyde, J. B. Shelton, and F. M. Miller.

Assistant Signal Maintainers W. C. Wallace and T. E. Joiner.

Signal Foreman F. K. Robinson.

M. B. Sandidge, Lamar Strickland, W. H. Denney, W. B. White, B. J. Shannon, and O. L. Clark, their successors and/or additions to the gang as may be involved during the period March 15 through April 15, 1959.

EMPLOYEES' STATEMENT OF FACTS: Beginning on or about March 16, 1959, the Carrier allowed persons who are not covered by the Signalmen's Agreement to perform work on the signal pole line in the vicinity of Atlanta, Georgia. The work consisted of the removal of crossarms, poles, No. 4 aluminum line wire, No. 10 bar line wire, No. 8 and No. 10 weatherproof line wire, and the reeling up of the wire. Some of the wire was loaded into a freight car and some was taken to the Pegram Shop. The removal work was performed by a group of men working under the direction of a man who stated he was a contractor.

In First Division Award 18923, without a referee, claim was denied by the Board holding that:

"There is a showing that claimants herein were on duty and under pay at the time the service giving rise to this claim was performed. This Division has in fifteen previous awards, the latest of which are Award 16264, 16507, and 18625, denied like claims where claimants were on duty and under pay. The Division will, therefore, without passing upon the merits, dictate a like holding here."

In First Division Award 19496, Referee Royse, claim was denied by the Board holding that:

"In its Statement of Facts, respondent carrier says claimant crew was on duty at the time of the alleged violation; that the members thereof were the eye-witnesses who called the attention of the Yardmaster to the situation.

The claim in Award 18923 was denied, with findings, in part:

' . . . This Division has in fifteen previous awards, the latest of which are Awards 16264, 16507, and 18625, denied like claims where claimants were on duty and under pay. The Division will, therefore, without passing upon the merits, dictate a like holding here.'

The same principle was applied in denying the claim in Award 13554, BRT vs. K&IT, the same parties as here.

The excerpted portion of the findings from Award 18923 is applicable; the claim is denied without passing upon the merits."

CONCLUSION

Carrier has proven that:

(a) A portion of the claim is barred by the agreement, the Board has no jurisdiction over it and should therefore dismiss it for want of jurisdiction.

(b) The effective agreement was not violated as alleged and does not support the claim and demand which the Brotherhood here attempts to assert. Carrier's action was in line with the recognized and established practice throughout the years. Moreover, claims identical in principle have been denied by the Board.

(c) Prior Board awards have denied claims where, as here, claimants were on duty and under pay.

That part of the claim which is barred should be dismissed by the Board for want of jurisdiction. The remainder of the claim should be denied because no part of it is supported by the agreement. The claimed work has not been contracted to signalmen.

OPINION OF BOARD: The issue in this claim is whether or not under the Scope Rule of the Signalmen's Agreement, Claimant had the right to perform the work of removing poles, wires, and crossarms on the signal pole from

Carrier's property. The Brotherhood contends that this work was on the signal system; and that since signalmen's work includes the installation and/or the removal of facilities involved, Carrier violated the Scope of the Agreement by contracting this work to persons not under this Agreement.

Our review of the record indicates that the signalmen disconnected the line and removed transformers, work which was properly assigned to them. With the power line eliminated, the pole line served no signaling function. Carrier's next action was to secure the removal of the completely abandoned line. It had no intention of relocating the equipment, or of raising the tracks, or of re-establishing this system, for it introduced a new remote control signal system for the same territory. Carrier transferred ownership of some of the equipment to the contractor in partial consideration for the work of hauling it from the property as further proof that it did not plan to use this equipment as a system.

The Scope Rule provides that, "Signal work shall include the construction, installation, maintenance and repair of signals." The work the contractor performed was the removal of abandoned and retired equipment; since once the signalmen had severed the signal connections, the wires, lines, and poles no longer existed as part of a signal system. The work, therefore, did not constitute the installing, maintenance, or repair of signals covered by the Scope Rule. Our position is consistent with the findings in Award Nos. 8172 and 12023.

We hold that the claim is without merit. The Agreement was not violated.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1964.