

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

HUDSON AND MANHATTAN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Hudson and Manhattan Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when, on November 12, 1959, it directed and permitted employees not covered by that Agreement to perform the work of a Signal Repairman by painting the cabinet around the Interlocking Machine, the Train Identification Ball Machine, and the back of the Diagram Board, in the Signal Interlocking Tower, Hoboken, New Jersey.

(b) The Carrier should now be required to compensate Signal Repairman D. Williams for eight (8) hours at his pro rata rate of pay for November 12, 1959. [Time Claim No. 143]

EMPLOYEES' STATEMENT OF FACTS: On November 12, 1959, the Carrier directed and permitted employees who hold no seniority or other rights under the Signalmen's Agreement to paint the cabinet around the Interlocking Machine, the Train Identification Ball Machine, and the back of the Diagram Board, in the Signal Interlocking Tower, Hoboken, New Jersey. On November 19, 1959, Mr. James J. Reese, General Chairman, presented the following claim to Mr. A. D. Moore, Superintendent Signal System & Way:

"The Signalmen's Committee hereby files claim in behalf and favor of Signal Repairman Mr. D. Williams, with headquarters at Hoboken, N.J., for 8 hours' pro-rata rate, for November 12, 1959, when and because employees not covered under the Scope of our Agreement were directed and permitted to perform the work of a Signal Repairman by painting the cabinet around the Interlocking Machine, the Train Identification Ball Machine and the back of the Diagram Board, in the Signal Interlocking Tower, Hoboken, N.J.

The above mentioned work is work solely belonging to the incumbent of the position Mr. D. Williams, by virtue of his Seniority and Bulletin rights under the Signalmen's Agreement.

members had actually been deprived of compensation or suffered any loss. In similar circumstances (Award 6417) this Division ruled as follows:

"Under these circumstances we are of the opinion that there has been a technical violation of the rules, resulting in no loss to the claimant and he is, therefore, entitled to no penalty. . . ."

Certainly, in an instance when it is not even clear that the work involved violated the Scope rule of the applicable agreement, there should be no recovery in the absence of proof of loss.

In an instance similar to the one involved herein, this Division acknowledged that a technical violation did exist, but characterized it as "so small and trivial that no award should be made thereon." See Award 3864.

CONCLUSION

Carrier submits that the claim is without merit, and should be denied.

OPINION OF BOARD: This claim arose when employees not covered by the Signalmen's Agreement painted the cabinet around the Interlocking Machine, the Train Identification Ball Machine and the back of the Diagram Board in the Tower at Hoboken, New Jersey, on November 12, 1959. The Brotherhood contends that such work belongs to Signalmen by reason of a provision in the Scope Rule, which provides that the Agreement relates to "maintenance of signals and their functional appurtenances." Claim is made for compensation for a signalman for eight (8) hours at his pro rata rate of pay.

The Carrier admits that the painting was done by others than Signalmen. It further admits that any painting for purposes of "maintaining" the equipment and appurtenances involved belongs to the Signalmen under the Scope Rule of their Agreement. However, Carrier denies that the painting involved was done for the purpose of "maintenance." They assert that it was done as a part of a general tower painting project undertaken as a matter of appearance.

The Brotherhood denies that the painting was for decorative purposes only and, in addition, asserts that even decorative painting would have the effect of delaying the need for preservative painting and, therefore, falls within the meaning of maintenance. However, there is no evidence in the record to support their assertion that the painting would have the effect of delaying future preservative painting. It would be speculative, at least, to presume that any additional coat of paint would delay needed painting and thus "maintain" property.

It is undenied that the painting was done at the same time a general tower painting project was completed. We believe the record supports Carrier's contention that the painting was done for appearance and decorative purposes rather than for "maintenance" or preservative purposes. For these reasons 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 Agreement has not been violated.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1964.