

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company that:

(a) The Southern Pacific Company violated the current Signalmen's Agreement effective April 1, 1947 (reprinted April 1, 1958 including revisions), particularly the Scope Rule and Rule 70.

(b) Mr. C. E. Hart and Mr. L. H. Carmichael be paid six and one-half (6½) hours each at their overtime rate of pay for the hours of 4:30 A.M. to 7:30 A.M., and 4:00 P.M. to 7:30 P.M.; Mr. D. L. Sabin and Mr. T. R. Johnson be allowed eight (8) hours each, the difference between their straight time rate of pay and the straight time rate of pay of Signalman, for the hours of 7:30 A.M. to 4:00 P.M., for February 6, 1961; and that Mr. Hart and Mr. Carmichael be paid three (3) hours each at their overtime rate of pay for the hours of 4:30 A.M. to 7:30 A.M.; and Mr. Sabin and Mr. Johnson be allowed eight (8) hours at the difference between their straight time rate of pay and the straight time rate of pay of Signalman for the hours of 7:30 A.M. to 4:00 P.M., for February 7, 1961
[Carrier's File: SIG 152-97; S-97-21-104]

EMPLOYEES' STATEMENT OF FACTS: This dispute is the result of Carrier's action in assigning track forces instead of signal forces to provide flag protection at highway-railroad grade crossings at which automatic highway crossing protection devices had been installed. Highway crossing protection devices, covered by the Signalmen's Scope, are installed and maintained by signal forces.

The basic issue involved herein is whether or not signal forces should be used to provide flag protection at a highway crossing, after they had installed automatic protection devices, during periods of time in which those devices are being repaired and/or not providing complete protection.

This claim is obviously an attempt on the part of Petitioner to secure for Signal Department employes through an Award of this Division an exclusive right to perform any and all crossing flagging at any crossing where there is an automatic crossing protection device if for any reason manual flagging of said crossing is required. Conclusive evidence thereof is the fact that within the last year, Petitioner has appealed to this Division from this property a series of 5 claims, including that in this Docket, having as their basis that very issue. The other four claims appealed to this Division carry the following Organization file numbers: NRAB-1058--Southern Pacific, NRAB-1156--Southern Pacific, NRAB-1157--Southern Pacific, and NRAB-1202--Southern Pacific.

Both Signal Department and Maintenance of Way employes have always been used for crossing flagging on this property and there have never been firmly defined lines agreed upon with respect to when one or the other of those crafts will be used. The determination as to by whom crossing flagging will be performed on this property has always been a prerogative of management, which has been exercised harmoniously for many, many years.

In the above situation, the principle enunciated in Award 8755, denying that claim, applies here. The following excerpt from this "Board's Opinion" in that case clearly reflects the analogy:

"Thus it appears that the work in question, not being exclusively allocated to the claimant in the scope section of the contract, and of a type performed by others in the past, is work which in the discretion of the Carrier, may be awarded to either class. The discretion to be exercised in the public interest."

Insofar as the claim for overtime rate is concerned, if there is any basis for claim submitted, which Carrier denies, nevertheless the contractual right to perform work is not the equivalent of work performed. That principle is well established by a long line of awards of this Division, some of the latest being 6019, 6562, 6750, 6854, 6875, 6974, 6978, 6998, 7030, 7094, 7100, 7105, 7110, 7138, 7222, 7239, 7242, 7288, 7293, 7316, 8114, 8115, 8531, 8533, 8534, 8568, 8766, 8771, 8776, 9748 and 9749.

CONCLUSION

The claim in this docket is entirely lacking in merit or agreement support and carrier requests that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: We find that this claim involves the same parties and question as that involved in Award No. 13143. Following our decision in that case, this claim will be denied.

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 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 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 11th day of December 1964.