

Award No. 13209
Docket No. SG-13025

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 Signalmens' Agreement, effective April 1, 1947, (reprinted April 1, 1958 including revisions), when it failed and/or declined to apply the Scope, Classification, Hours of Service, Call, Bulletin, Assignment, Promotion and Seniority Rules, or other provisions of the Agreement, when they failed to use Signal Department employes to perform signal work, in the installation of air lines to the pneumatically and electrically controlled derails for the one car stop repair installation at the Eugene Yard, Oregon.

(b) Mr. D. G. Meyers, Mr. B. W. Durfee, Mr. G. G. Winegar, Mr. V. R. Crawford, and Mr. J. A. Nichols, be allowed eight (8) hours each at the straight time rate of Signalmen's pay for each of the following dates, and eight (8) hours each at the Signalmen's straight time rate of pay on each date the Carrier continues to violate the current Signalmens' Agreement, August 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30, 31, September 1, 2, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 1960. [Carrier's File: SIG 152-82].

EMPLOYEES' STATEMENT OF FACTS: Beginning on or about May 16, 1956, the Carrier assigned its Water Service Department employes to install air compressors and air lines that were to be used exclusively for the operation of a new car retarder system at Eugene, Oregon. Upon learning that employes not covered by the Signalmen's Agreement were installing part of a car retarder system, the Brotherhood's Local Chairman filed a claim on behalf of Signal employes because the Scope of Signalmen's Agreement specifically covers the construction, reconstruction, installation, maintenance, testing, inspecting and repair of car retarder systems. That claim was progressed up to and including the Third Division of the National Railroad Adjustment Board, where it was assigned Docket No. SG-9805.

The Carrier subsequently assigned its Water Service Department and Electrical Department employes to maintain these air compressors, and that

ing air for the operation of the car retarders. This is not correct, as the source of power for the derails to which subject air lines were installed is the air compressors at the one-spot car repair facility (except in rare cases of emergency operation) and said derails are a part of the equipment used in the operation of that facility. It is apparently Petitioner's purpose in contending that the air lines to the derails led from the car retarder air compressors to thereby bring any work in connection therewith within the coverage of the Scope Rule of the Signalmen's Agreement, on the erroneous assumption that because that rule mentions car retarders, air compressors providing a source of power therefor, and all appurtenances thereto, would come thereunder. There is no basis whatever for the position. It is a fact beyond dispute that the consistent practice on this property has been to assign Water Service Department employes to install air lines from air compressors to the equipment for which air is used, whether it is car retarder installations, one-spot car repair facilities, or other installations. Conclusive evidence that such has been the case for at least 10 years will be found, in Carrier's Exhibits "J", "K", "L" and "M".

The work here claimed is not reserved to Signalmen by Agreement or other authority on this property; it is not now and has not been the practice for such work to be performed by Signalmen and Petitioner, in pursuing this and similar claims, is attempting to secure through an Award of this Division a new rule over and above that agreed to by the parties. The principle is well-established that it is not the function of this Board to modify an existing rule or supply a new rule where none exists.

CONCLUSION

Carrier requests that the claim be denied.

(Exhibits not reproduced).

OPINION OF BOARD: The Employes allege that:

"The facilities at the Eugene Yard include a car repair installation that involves a signal, a pneumatic car retarder, and electrically-controlled pneumatic derails. The compressed air that is used to operate the car retarder and derails is furnished by the air compressors that were installed for the sole purpose of furnishing air for the operation of the car retarders in the car retarder system at Eugene. Signal Department employes covered by the current Signalmen's Agreement maintain the signal and the derails. They also maintain the car retarder, including the shoes, spring and air cylinder."

We find that these allegations are consistent with the position taken by the Employes during handling of the claim on the property, and we also find from the correspondence in evidence that these allegations were not denied by Carrier on the property.

In its submission to the Board Carrier asserts, apparently for the first time:

"The primary source of power for the derails for which air lines in dispute were installed is those air compressors referred to in paragraph 2 above, which provide air for the one-spot car repair facility and are located at that facility. It is a fact that there is an em-

emergency air line running between the air compressors at the car retarder and the one-spot car repair facility which was installed by Water Service Department employes and ties into the air line at the one-spot car repair facility running from the air compressors at that facility to the derrails involved in this claim. However, this line is for emergency use only, in the event of a power failure at the one-spot car repair facility, and since that facility has been in operation — since approximately December 1, 1960 — has been used but once, and in that instance provided necessary power for all air-operated equipment at the one-spot facility and not just the derrails subject of this claim."

If these allegations of Carrier were properly before us, we would have a different case; but as the Employees point out in their rebuttal statement, these allegations were never made during handling of the claim on the property and hence are inadmissible under our rules of procedure. The Employees also challenge the correctness of the allegations.

Carrier's argument to the Board includes the statement that:

"In 1956, Petitioner initiated on this property claim on behalf of Signal Department employes which involved, among other things, the installation of air lines leading from the air compressors of the car retarder installation at Eugene to the point of utilization at the car retarder by Water Service Sub-Department employes. That claim has been docketed by this Division as SG-9805, and to this time no award has been made thereon. In that case, as it is in this Docket, it was Carrier's position that air lines leading from the source of power (air compressors) to the equipment utilizing that power — in that case car retarder units and direct acting switch machines — are not an integral part of said equipment. In Carrier's view, that is the controlling issue in this case * * *."

In Docket SG-9805, Award 10730, we sustained the right of the Signalmen to install the air lines and allowed certain Claimants one dollar each as nominal damages.

On the record before us, we conclude that Award 10730 is controlling here and each of the five Claimants in this case should be allowed one dollar.

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 was violated.

AWARD

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of January 1965.

Special Concurrence to Award No. 13209, Docket SG-13025

Award No. 13209 in its finding that the agreement was violated holds correctly and correctly cites Award No. 10730 as precedent therefor.

It is in the realm of the damages awarded that we find no right, and we submit that it is now time to follow the intent of the concluding paragraph of our Opinion in Award No. 10730:

“It is our final thought that if our nominal compensatory award does not have the intended deterrent effect to new violations, subsequent awards which depend on this and earlier authority may adjust the dispute differently.”

/s/ W. W. Altus
W. W. Altus
For Labor Members