

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, 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, particularly the Scope, when, on July 18 and 19, 1960, it permitted Highway Department personnel who hold no seniority or other rights under that agreement to perform the following amounts of work in connection with the installation of highway crossing signals at or near Horseshoe, North Carolina:

A drill operator and helper, twelve (12) hours each.

Two (2) truck drivers, eight (8) hours each.

Two (2) guards, or a guard and a foreman, eight (8) hours each.

Seven (7) convicts, eight (8) hours each.

(b) The Carrier now be required to compensate signal employees who were cut off or reduced in rank by force reduction on the dates in question, at their proper hourly rate, on a proportionate basis for all hours of signal work done by those who hold no seniority rights under the Signalmen's Agreement. [Carrier's File: SG-15432]

EMPLOYEES' STATEMENT OF FACTS: The dispute involved herein is based on the Carrier's action of permitting Highway Department personnel to dig and backfill a ditch for underground signal cable that was used in connection with the highway crossing signals that were being installed at Horseshoe, North Carolina, by signal forces. The disputed work was performed on July 18 and 19, 1960, even though the Brotherhood's Local Chairman, Mr. F. P. Higginbotham, advised the Carrier's Signal & Electrical Supervisor, Mr. C. L. Kale, in a letter dated July 16, 1960, that the performance of such work by Highway Department personnel would be violative of the Scope of the Signalmen's Agreement. (Mr. Kale later asserted he did not receive that letter.)

This claim is one of the results of the Carrier's action of reducing forces,

nized signal work in connection with the installation of automatic electrically operated and controlled flashing light crossing signals at Horseshoe, N. C. on the dates involved and there is not any basis whatever for the claim and demand here made. There has not been any violation of the effective Signalmen's Agreement as alleged and it does not support the claim and demand here made.

CONCLUSION: Carrier has shown conclusively that:

(a) The claim and demand which the Brotherhood attempts to assert are barred, in that the Brotherhood has not complied with the law, the Rules of Procedure of the Adjustment Board or the effective agreement in evidence in the presentation and handling of the claim and demand. The Board does not have jurisdiction over the claim and demand and should dismiss them for want of jurisdiction.

(b) The effective Signalmen's Agreement was not violated as alleged and does not support the claim and demand here made. The work of cutting through the pavement and opening a ditch across Highway No. 64 at Horseshoe, N. C., did not constitute "signal work," nor did it constitute "generally recognized signal work." As clearly indicated herein, all "signal work" and all "generally recognized signal work" was performed by signal employees.

Claim and demand should be dismissed by the Board for want of jurisdiction.

(Exhibits not reproduced).

OPINION OF BOARD: Carrier moves that the Board dismiss the claim because (1) it was not "handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes" as, allegedly, required by Section 3, First (i) of the Railway Labor Act; (2) Circular No. 1, issued October 10, 1934, by the National Railroad Adjustment Board, captioned "Organization and Certain Rules of Procedure," bars the Board from considering the claim since it had not "been handled" on the property "in accordance with the provisions of" the Act; and (3) the claim was not perfected in satisfaction of Article V 1. (a) of the August 21, 1954 Agreement.

The incident giving rise to the claim occurred on July 18 and 19, 1960. Petitioner timely presented a claim "to the officer of the carrier authorized to receive same" on August 13, 1960, on behalf of:

"Signal Department Employees who may be cut off or reduced by force reduction in rank . . ."

When this was denied, Petitioner, on September 21, 1960, appealed to Carrier's Signal & Electrical Superintendent. In the appeal Petitioner enlarged the description, from that in the original claim, of the employees involved, as follows:

" . . . let me know if you will allow the Signal employees assigned to the territory including Horseshoe, N. C., the Signaller and Asst. Signaller assigned to the Ashville Division, and furloughed signal employees who would have been entitled to the signal work performed, pay at their proper hourly rate . . ."

Upon denial Petitioner appealed to the Assistant to Vice President. In this appeal which was presented on October 22, 1960—more than 60 days after the incident giving rise to the claim first presented—Petitioner identified the employees involved as:

" . . . I am naming those employes on whose behalf the claim is filed, as follows: Messrs. J. E. Smith; R. B. Greene; H. L. McClendon; R. L. Savage; and G. W. Bennison . . ."

Those named were actively engaged in performing signal work on the project on July 18 and 19, 1960; thus, in a status unlike that previously described for the employes involved. This appeal and subsequent appeal to Carrier's highest officer was denied for, inter alia, the employes had not been named by Petitioner within 60 days of July 18 and 19, 1960.

Next, follows the claim filed with the Board in which the employes involved are identified as:

" . . . signal employes who were cut off or reduced in rank by force reduction on the dates in question . . ." (Emphasis ours.)

This differs from the original claim filed on the property in that the original was on behalf of employes "who may be cut off or reduced by force reduction in rank." (Emphasis ours.)

It is our opinion that the phrase "usual manner" as employed in Section 3, First (i) of the Act and the prescribed procedures found in the August 21, 1954 Agreement, contemplates an orderly process, either prescribed or customarily adhered to, for considering the merits of a claim as presented; and, during pursuit of the process Petitioner may not amend the particulars of the claim without agreement by the Carrier. To hold otherwise would destroy the appeals procedure on the property, in that in amending the claim in successive steps of the procedure, the claim develops into a new and different claim which was not presented "to the officer of the Carrier authorized to receive same;" and, therefore, could not be considered on the property in the "usual manner up to and including the chief operating officer." We are of the further opinion that Section 3, First (i) of the Act contemplates that the claim denied by the chief operating officer, on the property, is the claim which "may be referred" to the Board.

Upon the basis of the foregoing facts and reasons we find that we are barred from considering the Claim. We will dismiss.

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 we may not consider the Claim.

AWARD

Claim dismissed.

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

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 29th day of January 1965.