

Award No. 13651
Docket No. SG-11917

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, 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 Carrier violated the current Signalmen's Agreement effective April 1, 1947 (Reprinted April 1, 1958 including revisions), particularly the Scope Rule and Rule 70.

(b) The following employes in Signal Gang No. 11 be paid the same number of hours at the straight-time rate as was required by employes not covered by the Signalmen's Agreement since the work on the switch heater was started and continuing until it is completed: J. P. Dodson, Signal Foreman; B. G. Fry, Leading Signalman; R. C. Logan, R. C. Morey, and R. G. Poulson, Signalmen; M. J. Butterly, A. L. Hanson, and A. F. Green, Assistant Signalmen.

[Carrier's File: S-97-9-101]

EMPLOYES' STATEMENT OF FACTS: During October, 1958, the Carrier assigned employes who are not covered by the Signalmen's Agreement to install a switch heater at the No. 54 switch at Norden Interlocking. Switch No. 54 is an electric switch and is a part of the Norden Interlocking.

The heater is a circulating hot water type operated from an automatic oil-fired boiler, and it was installed for the purpose of melting ice and snow from this power-operated interlocking switch.

The maintenance of way employes who performed the disputed work did so intermittently and the record does not indicate how much time these employes have spent working on this heater since the beginning of the installation.

Under date of February 15, 1959, Mr. L. H. Carmichael, Local Chairman, presented the following claim to Mr. A. C. Murphy, Signal Supervisor:

CONCLUSION

Carrier requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This docket was referred to the National Disputes Committee established by Memorandum Agreement dated May 31, 1963, to decide disputes involving interpretations on applications of certain stated provisions of specified National Non-operating Employe Agreements. On April 22, 1965, that Committee rendered the following Findings and Decision (NDC Decision 21):

"**FINDINGS:** (ART. V) The above claim was presented in writing to the officer of the Carrier authorized to receive same in letter dated February 15, 1959. The Carrier contends before the Third Division that the claim is barred with respect to dates prior to December 17, 1958 (60 days prior to filing of the claim) by reason of the provision of Paragraph 3 of Article V of the Agreement of August 21, 1954 that 'no money claim' with respect to an alleged continuing violation 'shall be allowed retroactively for more than 60 days prior to the filing thereof.' The employees in their rebuttal submission do not dispute or otherwise comment on this contention.

The National Disputes Committee rules that the provision of Paragraph 3 of Article V of the August 21, 1954 Agreement—

'However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof.'

is controlling, and no money claim may be allowed prior to 60 days preceding the date of filing thereof.

DECISION: No monetary claim may be allowed with respect to dates prior to December 17, 1958.

This decision disposes of the issues under Article V of the August 21, 1954 Agreement. The docket is returned to the Third Division, NRAB in accordance with Paragraph 8 of the Memorandum Agreement of May 31, 1963, for disposition with respect to dates subsequent to December 16, 1958."

This claim arose from the installation of a switch heater at No. 54 switch at Norden Interlocking. The Brotherhood takes the position that Carrier violated the Agreement, particularly the Scope, when it assigned Maintenance of Way employes to install the switch heater. It contends that Signal Department employes have always installed switch heaters because they are part of the signal system.

Carrier denies the claim with the assertion that the heater is not connected with any signal circuit, cannot be turned on or off by remote control, and must be operated at the location. It also maintains that Maintenance of Way employes have in the past installed switch heaters not connected with the signal system.

The record contains numerous assertions and counter-assertions but lacks evidence to support them. Without sufficient evidence upon which to base a determination of the issue, the claim is dismissed.

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 Claim should be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1965.