

Award No. 13676
Docket No. SG-13127

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ross Hutchins, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company:

(a) The Carrier violated the Signalmen's Agreement and especially Rule 1, Scope, when it assigned generally recognized signal work to others who are not covered by said agreement.

(b) Signal Maintainer R. F. Massey and Assistant Signal Maintainer H. L. Morris, on whose territory the violations occurred, be compensated for two hours and forty minutes at their respective pro rata rates of pay for the violations that occurred during their regular working hours, and for two hours and forty minutes at their respective overtime rates of pay for the violations that occurred outside their regular working hours. Occasions for which the claims for the pro rata rate of pay are based:

September 23, 1959, power cut off at South Akka.

September 23, 1959, transformer put on line at Nenemoosha.

September 24, 1959, power cut off at South Akka.

September 25, 1959, power cut off at South Akka.

September 25, 1959, transformer taken off line at Nenemoosha.

September 28, 1959, power cut off at Aladocks.

Occasions for which the claims for the overtime rate of pay are based:

September 23, 24, and 25, 1959, power cut on at Akka after 4:00 P. M.

September 26, 1959, transformer put on line at Aladocks.

September 27, 1959, power cut off at Aladocks.

September 27, 1959, power cut off on at Aladocks.

September 28, 1959, power cut on at Aladocks after 4:00 P. M.

[Carrier's File: G-304-14; G-304]

EMPLOYEES' STATEMENT OF FACTS: As shown by paragraph (a) of the Statement of Claim, the basis of this dispute is our contention that the Carrier violated the current Signalmen's Agreement when it assigned generally recognized signal work to persons who are not covered by that agree-

"LOUISVILLE AND NASHVILLE RAILROAD COMPANY**OFFICE OF Division Engineer AT Mobile, Ala., May 31st, 1960****"Mr. P. P. Ash:**

"With regard to your letter of May 26th, 1960, addressed to all Supervisors of Communications and Signals concerning B.R.S. of A. claim account Telephone Department employes cutting 550 volt power line on and off while stringing line wire and hanging transformer to obtain lights for camp car use.

"It has been the practice on the M&M Division for the telephone gang to turn the power on and off while stringing wire or doing other line work.

"We have not permitted transformers to be attached between Mobile and New Orleans in train stop territory for camp car use, but in a few instances we have permitted transformers to be attached for camp car use between Montgomery and Mobile.

L. B. Hale."

The first part of the claim is for the payment of 2'40" at pro rata rate of pay for September 23, 24, 25, and 28, 1959, (Wednesday, Thursday, Friday, and Monday) on which dates the T&T employes allegedly performed work covered by the signalmen's agreement on the days and during the hours of claimants' assignment. As claimants worked their regular hours on the dates involved, this portion of the claim is, therefore, a penalty claim. There is no provision in the signalmen's agreement providing for the payment of penalty claims of this nature.

The second part of the claim is for the payment of 2'40" at the overtime rate on September 23, 24, 25, 26, 27, and 28, when it is alleged the T&T employes performed signalmen's work outside of claimants' assigned hours or on days (Saturday and Sunday) they were not assigned to work.

A boiling down of claimants' claim shows the question here involved to be—

Did the throwing of the switch to cut the 550-volt power off and on by the T&T employes—for the protection of T&T employes while stringing telephone line wire, and the attaching of a transformer to the 550-volt power line in order to provide current for the electric lights in the camp cars of the T&T employes—constitute the performance of work covered by and reserved to signal employes by the scope of the signalmen's agreement?

Carrier submits that the T&T employes did not perform any work contemplated in the Scope Rule of the Signalmen's Agreement, for which reason the claim should be denied.

OPINION OF BOARD: Between September 23, 1959 and September 28, 1959, both inclusive and possibly at other times not herein in dispute, the telephone line gang was performing work on the telephone line which utilized common poles with the signal line. While performing their work on the telephone line the telephone line gang would cut off the power on the signal line. Additionally, the telephone line gang apparently set transformers to supply

lights for their camp cars, but nowhere in the employes statement of facts do they refer to the transformers. The employes could assist this Board and themselves if they would set out in their statement of facts the facts upon which their claim is based in compliance with Circular No. one. As their statement of facts does refer to various exhibits and as it is possible to make out from these exhibits that the transformers were placed upon the signal line we will consider the issues raised by the installation of the transformers by the telephone line gang.

The employes base their claim upon the Scope Rule of their agreement which reads in part:

"This agreement covers . . . all employes, classified herein, engaged in the construction, installation, repair, inspecting, testing and maintenance of all . . . power or other lines, with poles, fixtures, conduit systems, transformers, arresters and wires or cables pertaining to interlocking and signaling systems; . . . together with all appurtenances pertaining to the above named systems and devices, as well as any other work generally recognized as signal work."

The Carrier points out that the interruption of power on the signal line which carried 550 volts was necessary for the safety of the telephone line gang. We do not doubt that it was, but the question is not the necessity of the work but the obligation of the Carrier to have the signal employes perform this work.

The same situation is true in connection with the setting of transformers. It is apparent that the work needed to be done, that the telephone line gang had the knowledge to do the work, and that they did the work in connection with the performance of their other duties. The necessity of the work would not be determinative of who was entitled to the work in the absence of an emergency which is neither alleged or proven in this case, as there is no showing that the signal forces were not available.

Inability to perform work would be a defense, but ability to perform the work does not automatically grant the work to the employe with the ability. There is of course no allegation that the signalmen did not have the ability to perform the work in question.

The Carrier further alleged that throwing the switch to cut the 550 volt power line on and off required no special skills. This Board will take judicial notice, however, that the throwing of a switch on a 550 volt power line with a long pole while standing in a swamp does require sufficient caution and know-how as to constitute special skills.

The Carrier also alleges that the work performed was not signal work within the Scope of the agreement, but, of course, that is the question before us.

The letter from Mr. Hale to Mr. Ash is not properly before this Board. The evidence plead in the Carriers ex parte submission is not properly before this Board.

The specific provisions of the agreement covers the installation and maintenance of transformers. There can be no doubt that this was clearly signal work.

The agreement also covers the maintenance of power lines. We believe that maintaining the current on that power line is part of the maintenance of that line. Therefore we hold that the turning of the power on and off in this instance was signal work.

No case was brought to our attention which we believe to be directly in point, but Award 906 (Garrison); Award 1501 (Shaw); Award 2983 (O'Malley) all support this general proposition.

Having adjudicated this case on the merits we must now consider the issue of damages.

The right of the employes to recover for the services that were performed outside their regular working hours are not contested by the Carrier and for that reason are sustained.

The employes cite only cases authorizing a penalty in support of their claim to recover for violations occurring during regular working hours. The employes advance no other theory. This Board cannot impose penalties unless authorized by the agreement. Authorization to impose penalties does not occur in this agreement, and accordingly that part of the claim which is founded upon a penalty cannot be sustained. The violation that occurred during the regular working hours of the Claimants may have caused a loss for which monetary remuneration is available and the damages may or may not be the amount as prayed for in this claim and the damages, if any, may or may not be due to these Claimants, but no damages are recoverable on the theory advanced by the employes in this docket.

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 was violated.

AWARD

Claim sustained in part in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June, 1965.

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