

Award No. 13691
Docket No. SG-13375

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Kieran P. O'Gallagher, 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. W. J. Ritchie be paid three hours at his straight-time rate of pay for February 17, 1961, a total of \$7.98; Mr. E. M. Davis be paid three hours at his straight-time rate of pay for February 17, 1961, a total of \$7.98; and Mr. T. W. Hawkins be paid three hours at his straight-time rate of pay for February 17, 1961, a total of \$8.07. [Carrier's File: SIG 152-90]

EMPLOYES' STATEMENT OF FACTS: On February 17, 1961, the Carrier assigned three Maintenance of Way employees not covered by the Signalmen's Agreement to handle signal material. A truck driver and two extra gang laborers loaded signal poles from a pole pile at Vincent, California, onto a company truck, transported them to and unloaded them at Russ, California, where they were installed by signal forces about two weeks later. The poles at Vincent belong to the Signal Department and are carried on Signal Department inventory.

Under date of March 4, 1961, the Brotherhood's Local Chairman presented a claim to the Superintendent on behalf of the three signal employees named in paragraph (b) of the Statement of Claim for three (3) hours' pay each at their respective straight time rates of pay, on the basis the Carrier violated the Scope and Rule 70. The Local Chairman's original claim has been reproduced, attached hereto and identified as Brotherhood's Exhibit No. 1. The Superintendent's denial of March 27, 1961, is Brotherhood's Exhibit No. 2. In a letter dated March 29, 1961, the Local Chairman notified the Superintendent of the rejection of his decision, then referred this matter to the Brotherhood's General Chairman.

On April 6, 1961 (Brotherhood's Exhibit No. 3), the General Chairman presented an appeal to the Assistant Manager of Personnel, Mr. G. L. Naylor. Messrs. Hodges and Naylor discussed the claim in conference on May 4, 1961, and Mr. Naylor wrote a letter of denial on May 5, 1961 (Brotherhood's Exhibit No. 4).

"Rule 70. LOSS OF EARNINGS. An employe covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement shall be reimbursed for such loss."

Obviously the Scope Rule does not provide that Signal Department employes have any claim whatever to the transporting of signal material or equipment. That rule goes to construction, reconstruction, installation, maintenance, testing, inspecting, and repair of Signal equipment and installations there identified and says nothing whatever about work subject of this claim.

Were Petitioner's position in this case to prevail, conceivably it would not be possible for Carrier to move a piece of signal equipment by truck between any points on its lines, unless that truck was driven by an employe covered by the current Signalmen's agreement.

With reference to Rule 70, cited in support of this claim, for that rule to become operative, it must first be shown that there has been a violation or misapplication of any portion of the current agreement. This has not been, nor can it be, done.

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: The instant claim arose when the Carrier requested a Maintenance of Way truck driver and a Maintenance of Way laborer to take a truck, assigned to their department, and deliver two poles from Vincent to Russ, California, which poles were installed as "push braces" by Signal Department employes in a Signal Department installation.

The burden of proving that the work in question is the exclusive right of the Signal Department rests upon the Organization, either by showing that it is reserved to them in the Scope Rule, or by a preponderance of the evidence that past practice had vested the exclusive right to perform this work in the Organization. A careful examination of the record before us leads to the conclusion that the Organization failed to meet the burden of proof imposed upon it, and the claim therefore, lacking the merit for a sustaining award, shall 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 this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Agreement was not violated.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1965.