# Award No. 13693
# Docket No. SG-13446

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

Kieran P. O'Gallagher, Referee

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**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, Rules 13, 15, 16, and 70. Also Rule 1942 of the Carrier's own Book of Rules for the Maintenance of Way and Structures.

(b) Mr. George Brautlacht be paid six (6) hours at his overtime rate of pay for April 18, 1961, the time it would have taken him to drive from Dorris to Alturas, California, and make proper tests of the crossing protection at crossing 458.4 in Alturas, which is part of his district. [Carrier's file: SIG 152-101]

EMPLOYES' STATEMENT OF FACTS: At the time this dispute arose, Claimant Brautlacht was the Signal Maintainer at Dorris, California. On April 18, 1961, outside Claimant's regular working hours, a train struck an automobile at crossing 458.4 in Alturas, California, which is on Claimant's signal maintenance territory. One or more Carrier officials not covered by or classified in the current Signalmen's Agreement tested the crossing signals and reported all bells and lights were functioning properly. Claimant was at home and available but the Carrier made no attempt to call him to perform the signal work of testing the crossing signals at the crossing where the accident occurred.

Inasmuch as Rule 16 of the current Signalmen's Agreement provides that the regular assigned employes shall be called, unless registered absent, the Local Chairman filed a claim on behalf of Signal Maintainer Brautlacht for time and one-half pay for six (6) hours, the amount of time that would have been required for him to drive from Dorris to Alturas, make the proper tests on the crossing signal installation, and return to Dorris. The Local Chairman's original claim, presented to the Carrier's Superintendent on June 7, 1961, is Brotherhood's Exhibit No. 1, and the Superintendent's denial of July 7, 1962, is Brotherhood's Exhibit No. 2. On July 22, 1961, the Local Chairman notified the Superintendent of the rejection of his decision, then referred this matter to the General Chairman.

Under date of July 26, 1961, the General Chairman presented an appeal

the work to be done by the painter, but he does not instruct the painter or direct him in the details of the work. Under these circumstances, the B&B Supervisor is not doing the work of a painter foreman. We point out also that the agreement does not require the assignment of a foreman. The need of supervision, in the absence of agreement provisions to the contrary is a matter within the prerogatives of management. Awards 4235, 4992, 6114, 6699. It appearing that Carrier does not deem the assignment of a foreman necessary and there being no employe wrongfully performing the duties of a foreman, there is no basis for an affirmative award."

Without in any way receding from its position that the claim here under discussion is entirely unwarranted and completely lacking in merit, Carrier directs attention to the fact that the penalty here sought is at the overtime rate of pay. This Board has in a long line of awards consistently held, with respect to penalty claims at the overtime rate of pay, that the contractual right to perform work is not the equivalent of work performed and has declined to sustain such claims at the overtime rate of pay—see this Division's Awards 7094, 7222, 7239, 7242, and 7316, to cite but a few.

CONCLUSION

Carrier asserts claim is completely void of merit and respectfully requests this Division to deny same.

(Exhibits not reproduced).

OPINION OF BOARD: The facts and circumstances found in the instant claim are similar, with some minor variations to those found in Award No. 13692 wherein the same Claimant and the same Carrier are involved. In this case as in Award No. 13692 the Organization has failed to meet the burden of proof imposed upon it to show that the Carrier's officers either inspected or tested the crossing signals as contemplated in the current Agreement, and the Board must arrive at the conclusion, as it did in Award No. 13692 that the claim, lacking merit must 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 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 not violated.

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.