

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Daniel Kornblum, Referee**

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**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 that:

(a) The Carrier violated the current Signalmen's Agreement when it removed employees assigned to the Birmingham Division Gang from their assigned positions and used them to perform the work of wiring apparatus in the System Signal Construction Storeroom in Birmingham, Alabama, for use on the MNO&P Division, instead of using employees assigned to System Gang No. 2.

(b) The employees adversely affected by this violation be compensated for an equal amount of time equivalent to that worked by the Birmingham Division employees, as shown below:

1. Signalman J. R. Wathen — for time worked by Signalman T. E. George wiring bungalow for North End Hardin at eight (8) hours per day for the following dates: August 31, 1960; September 1, 2, 6, 7, 8, 9, 12, 13, 14, 15, and 16, 1960.
2. Signalman L. B. McHargue — for time worked by Leading Signalman P. E. Kirkpatrick on bungalow for South End Hardin, the same hours as shown in (b)-1.
3. Signalman O. R. Lee — for time worked by Signalman C. F. Wynn wiring in bungalow on Signal 739-2 & S.W.L.K. at G&SL crossing MNO&P Division, on August 31, 1960; and September 1, 2, 13, 14, 15, and 16, 1960, eight (8) hours per day.

(c) Leading Maintainer P. E. Kirkpatrick and Signalmen T. E. George and C. F. Wynn be compensated at their respective rates of pay for each day they were denied the right to work on their regular

assignments and were required to work away from their assigned positions as shown in part (b) above. [Carrier's File: G-304-14; G-304]

**EMPLOYEES' STATEMENT OF FACTS:** The parties to this dispute are, as the record shows, in agreement concerning the facts in this case. On the dates involved in this dispute, the Carrier used employees regularly assigned to the Birmingham Division Gang to wire bungalows which were a part of the C.T.C. installation on the Montgomery and New Orleans and Pensacola Division.

The Carrier has a System Signal Gang No. 2 located at Birmingham, Alabama. The Brotherhood contends that this work properly belonged to this System Signal Gang and the Carrier violated the Agreement when it used employees from the Birmingham Division Gang to perform work on apparatus scheduled for use on another Division. The claim is for employees in the System Signal Gang and the employees from the Birmingham Division Gang who were removed from their regular positions and were required to perform work for another Division.

On October 6, 1960, General Chairman Tom McCamy filed a claim on behalf of the Claimants in this dispute with Mr. C. E. Pinkston, Assistant Signal Engineer. See Brotherhood's Exhibit No. 1.

Under date of October 28, 1960, Assistant Signal Engineer Pinkston addressed a letter to General Chairman McCamy in which he denied the claim. See Brotherhood's Exhibit No. 2.

On November 10, 1960, Assistant Signal Engineer Pinkston addressed another letter to General Chairman McCamy regarding the claim. In this letter, Mr. Pinkston referred to a telephone conversation between himself and the General Chairman. He also stated that if the Carrier's action in this case was a violation, it was an error. See Brotherhood's Exhibit No. 3.

Upon receiving Mr. Pinkston's letter of November 10, 1960, General Chairman McCamy, on November 23, 1960, addressed a letter to Claimant O. R. Lee in which he informed Mr. Lee that Assistant Engineer Pinkston, in the telephone conversation referred to in Exhibit No. 3, had requested him to get the claim withdrawn, if possible, on the grounds that it was an error and had been corrected. Mr. McCamy sent Claimant Lee a copy of Mr. Pinkston's letter of November 10, 1960, and asked the men affected to review the matter and let him know their decision. The contents of this letter was discussed with the Carrier while the dispute was being progressed on the property. The letter is identified as Brotherhood's Exhibit No. 4.

Claimant Lee replied to General Chairman McCamy's letter of November 23, 1960, on November 29, 1960. He informed General Chairman McCamy that the violation could not have possibly been an error as he personally pointed out to Mr. Pinkston that the Carrier was liable for a claim as a result of its action. He further informed Mr. McCamy that he told Mr. Pinkston that if the Birmingham Division employees were removed from the job a claim would not be progressed. Mr. Pinkston refused to do this and when the claim was progressed, he turned the fans in the shop off and they remained off for the balance of the season. The contents of this letter was discussed during conference with the Carrier. The letter is identified as Brotherhood's Exhibit No. 5.

As all claimants involved worked their regular assignments on the dates involved, the claims are in fact penalty claims, based on an alleged violation of the agreement.

Carrier submits the facts involved, the applicable rules of the agreement, and the practice heretofore followed show conclusively there is no contractual support for the employees' claims, for which reason same should be denied.

**OPINION OF BOARD:** This is a two part claim. The first part, consisting of subdivisions (a) and (b), is in behalf of three named members of Carrier's **System Gang No. 2** on the ground that the Carrier, in violation of the Agreement, used three members of a **Birmingham Division Gang** to perform construction work on a new installation which, it is claimed in the first instance, was work reserved to these Claimants as members of **System Gang No. 2**. The work involved was the wiring of bungalows and relay cases to be used in connection with the C.T.C. installation on the MNO&P Division of the Carrier. In the alternative the Organization contends "that if any division gang men had a right to this work, it should have been MNO&P Division men because the work performed was for their seniority district."

The second part of the claim, set forth in subdivision (c), is in behalf of the three members of the **Birmingham Division Gang** who did the disputed work, on the grounds that by being so assigned "they were required to work away from their assigned positions".

The first part of this claim turns entirely upon the interpretation to be given Rule 51 (a) of the Agreement, the System Gangs Special Rule. This Rule provides:

"(a) System gangs will be confined to construction work on new installations, except for necessary maintenance changes in connection with a construction project, and in emergency cases such as derailments, floods, snow blockades, fires and slides."

The language of this Rule does not, as the Organization contends, reserve all new signal construction work to System Gangs; it simply states, in effect, that if and when System Gangs are set up the work to which they will be "confined" is construction work on new installations. Indeed, the alternative advanced by the Organization itself to this portion of the claim suggests the possibility that a Division Gang might properly have been assigned the work in question if it had been the right one (i.e., from the MNO&P Division and not the Birmingham Division). It is clear, that the first part of this claim has no support in the Agreement and must be denied.

The second part of the claim must also be denied because, having in mind that those three Claimants from the Birmingham Division Gang were actually paid for the work in issue, the very argument upon which the claim is predicated is that, one way or another, the three Claimants of the Birmingham Division Gang were not entitled to be assigned this work. In similar circumstances, the Board has frequently held that Claimants so situated have no standing to make the claim (e.g. Awards 6949-Carter, 7818-L. Smith, 7082-Whiting, 11049-Dolnick, 11107-McGrath, 11296-Moore). As was said of the Claimant in Award 7082 (Whiting, *supra*):

"if he was improperly used to relieve the assigned rest day of another position, the loss of work accrues to the employe who was

entitled to perform it under Rule 46½, not to the one who has been paid for performing it. Claimant worked the assigned hours of his position performing work within the craft and class to which he belonged and was paid the highest rate applicable to either position. He was in no way injured and a claim on his behalf is therefore wholly lacking in merit."

Compare, Award 4601 (Whiting).

The Carrier also emphasizes, among other things, that the disputed work was actually performed within the geographical bounds of the Birmingham Division although, admittedly, it was to be installed on the MNO&P Division. We do not pass upon the validity of this argument urged by the Carrier. We simply hold that, for the reasons already stated herein, both parts of the claim have not been sustained and must, accordingly, be denied.

**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 Employees involved in this dispute are respectively Carrier and Employees 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 29th day of July 1965.

#### DISSENT TO AWARD 13776, DOCKET SG-13144

The error of this Award is clearly disclosed by recalling that so far as part (b) 1, 2 and 3 of the Claim is concerned the basic issue was whether Carrier has the right under the rules to use Birmingham Division gang employees on MNO&P Division work. Even a cursory examination of the Claim is sufficient to disclose that the Employees were not asking, as the Majority erroneously asserts, that all new signal construction work be reserved to System Gangs.

Carrier conceded throughout the record that "The rights of employees, other than when assigned to a system gang, are confined to the seniority district where employed. The rights of employees, while assigned to a system gang, extend over the entire system. \* \* \*". Similarly, it was conceded that the work involved was of the type contemplated by Rule 51(a),

meaning that the Claimants specified in (b) 1, 2 and 3 of the Claim were eligible to perform the work by virtue of both the nature and locale of the work and their system seniority status whereas members of the Birmingham Division gang had no contract right to the work. The Majority, consisting of the Referee and the Carrier Members, should have confined its effort to the issue presented.

The misty implication that the Organization argued against itself by suggesting that if any Division gang men had a right to the work, it should have been the MNO&P Division men, is wholly irrelevant in light of the basis upon which the dispute was handled both on the property and before the Division. Furthermore, the Majority was well aware that the Division has long held that the presence of others in whose behalf a claim might have been made is of no concern to the Carrier.

As for part (c) of the Claim, it is understandable that the Majority saw fit to make no mention of Rule 27 cited and relied on by Petitioner, reading in pertinent part:

"Except in emergency, an employe will not be changed from his assigned position \* \* \*".

The Awards relied on by the Majority in support of the denial of this portion of the Claim fall short of the mark in that none of them involve a comparable fact situation. It is interesting to note, however, that the principles and reasoning employed in Award 6949 support Petitioner's position with respect to parts (a) and (b) of the instant Claim.

This Award falls far short of interpreting the rules in the light of the facts; therefore, I dissent.

/s/ G. Orndorff  
G. Orndorff  
Labor Member