

Award No. 13801
Docket No. SG-13686

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

PENNSYLVANIA-READING SEASHORE LINES

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Pennsylvania-Reading Seashore Lines that:

(a) The Carrier violated the Scope Rules of the current Agreement when it assigned men not coming within the Classifications set forth in Article 1 of this Agreement to perform work accruing to Signal Department Forces. Said work consisted of the removal of wooden signal poles along the Carrier's right-of-way at Woodbury Heights, N.J., on April 14, 1961.

(b) The Carrier pay to R. W. Schwartz and C. E. Farley, Signalmen C&S, with headquarters at Westville, N.J., two hours' pay at pro rata rate for the time required to perform this work.

EMPLOYES' STATEMENT OF FACTS: On April 14, 1961, the Carrier assigned persons not classified in or covered by the Signalmen's Agreement to remove poles from the Communications and Signal Department pole line. This work was performed on Carrier's property at Woodbury Heights, New Jersey.

Under date of April 24, 1961, the Brotherhood's Local Chairman presented a claim for two hours' pro rata pay for C&S Signalmen R. W. Schwartz and C. E. Farley. The Carrier's denial, dated May 15, 1961, has been reproduced and attached hereto as Brotherhood's Exhibit No. 1. On May 20, 1961, the Local Chairman presented an appeal to the General Manager, with a copy thereof to the Supervisor as notice of the rejection of his decision. The General Manager's letter of denial, dated June 16, 1961, is Brotherhood's Exhibit No. 2.

In accordance with an established procedure, the Local Chairman and the General Manager prepared a Joint Submission before the dispute was handled with the General Manager by the General Chairman. The time limit provisions for handling disputes was extended by mutual consent before the Joint Submission was completed. The Joint Submission is Brotherhood's Exhibit No. 3, and the General Manager's letter of denial to the General Chairman is Brotherhood's Exhibit No. 4.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To Said Agreement And To Decide The Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act, to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that there has been no violation of the Scope Rule of the applicable Agreement in the instant case and that the Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue is whether or not Carrier breached the Signalmen's Agreement by using Maintenance of Way employees rather than signalmen to remove two wooden poles from the ground.

These poles had been part of a communications system, but when it became necessary to raise the wire over a new track, signal employees were called upon to set new and taller poles adjacent to the existing poles and to transfer the crossarms and wires to the new poles from the shorter poles. Among the latter were the two poles in question and Maintenance of Way men used their crane to pull them out of the ground after they had been stripped by signalmen of crossarms and wire.

The removal of poles that no longer hold signal equipment is not mentioned specifically in the Scope Rule of the controlling Agreement. Although that Rule embraces all work in connection with installation and maintenance of signal equipment "that has been generally recognized as telegraph, telephone or signal work", there is insufficient evidence in the record to establish that the disputed duties come within that category and belong exclusively to signalmen.

In the absence of additional facts, the removal of bare wooden poles that are no longer part of, or essential to, the operation of the signal system would seem to be a type of dismantling operation that properly

can be performed by Maintenance of Way employees. Under the circumstances, the claim will be denied. See Awards 12800 and 13560, as well as 12023, 12187 and 12329.

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 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 3rd day of August 1965.