

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al. that:

(a) Mr. B. J. Sigmon, Signal Maintainer, Statesville, N. C., be paid at his respective overtime rate of pay for ninety-six (96) hours worked by employees of the Communications Department, Southern Railway, in moving signal line at Catawba, N. C., on January 22 and 23, 1962, on whose territory the signal work was done, as indicated above.

(b) Messrs. V. E. Brown, Signal Maintainer, Inman, S. C.; R. L. Savage, Signal Maintainer, Saluda, N. C.; and George W. Bennerson, Assistant Signal Maintainer, Saluda, N. C., be paid at their respective hourly overtime rates of pay, on a proportionate basis, for the total man hours worked by the Contractor and his forces—or a total of twenty (20) man hours—in violation of our agreement, when persons not covered by the agreement were used to dig holes and set two poles in the signal line, as indicated above. {Carrier's File: SG-17714}

EMPLOYEES' STATEMENT OF FACTS: On January 22 and 23, 1962, Carrier required and/or permitted Communications Department Employees (not covered by the Signalmen's Agreement) to perform signal work of moving a signal pole line at Catawba, No. Car. Three of those employees were used for eight hours, and two employees for four hours, on January 22; and eight employees were used for eight hours on January 23—for a total of ninety-six man hours.

On January 25, 1962, a Contractor and four of his men were used four hours (for a total of twenty man hours), with truck, A-frame and hole digger, to dig holes and set two poles in the signal pole line at Mile Post W. 63.1 between Spartansburg, So. Car., and Asheville, No. Car.

On March 22, 1962, the Brotherhood's General Chairman submitted a claim on behalf of Signal Maintainer B. J. Sigmon, Statesville, No. Car., for ninety-six hours' overtime pay for the work performed on January 22 and 23, 1962, on his territory by employees of Carrier's Communications Department—and on behalf of Signal Maintainer V. E. Brown, Inman, So. Car., Signal Maintainer R. L. Savage, Saluda, No. Car., and Assistant Signal Maintainer George W. Bennerson, Saluda, No. Car., for overtime pay on a proportionate basis for the twenty man hours worked by the Contractor and his forces on January 25, 1962. The General Chairman's original claim letter, sent to Carrier's Signal and Electrical Superintendent, Mr. J. M. Stanfill, is Brotherhood's Exhibit No. 1. Mr. Stanfill's letter of denial, dated April 11, 1962, is Brotherhood's Exhibit No. 2.

in place by Y. C. Ballenger Electrical Contractor. They could not, by any stretch of one's imagination, have performed the here complained of work for the reasons heretofore outlined.

Thus on the basis of prior awards, none of the claimants have any contract right to the compensation here demanded on their behalf.

CONCLUSION

Carrier respectfully submits it has shown that:

(A) The claims and demands are barred.

(B) The claims and demands are without basis and are unsupported by the Signalmen's Agreement in evidence.

(C) Prior Board awards support fully Carrier's action in contracting the special work.

(D) The Board has denied claims and demands where, as here, claimants were on duty and under pay.

The claims and demands which the Brotherhood here attempts to assert being barred should be dismissed by the Board for want of jurisdiction.

(Exhibits not reproduced).

OPINION OF BOARD: Petitioner, on March 22, 1962, timely presented in writing to the officer of Carrier authorized to receive same—J. M. Stanfill, Signal and Electrical Superintendent—a claim as set forth in the Statement of Claim, supra. The claim as presented satisfies Article VI.(a) of the Agreement of August 21, 1954, in every respect.

The Signal and Electrical Superintendent denied the claim on the merits giving his reasons therefor. The denial was appeal to H. A. Hudson, Assistant to the Vice President. In the appeal Petitioner did not reiterate the claim as presented; instead, it identified it as follows:

"Please accept this as appeal from the decision of Mr. J. M. Stanfill, Signal & Electrical Supt., Charlotte, N. C., who has declined the claim on behalf of certain named signal employes, to be paid for time worked by a contractor and his forces, and that done by employes of the Communication Dept., in performing signal work, as indicated in the claim."

In denying the claim the Assistant to the Vice President wrote to the General Chairman:

"I have your letter of May 3rd, file Sou.LE., in which you say, 'Please accept this as appeal from the decision of Mr. J. M. Stanfill, Signal & Electrical Supt., Charlotte, N. C., who has declined the claim on behalf of certain named signal employes, to be paid for time worked by a contractor and his forces, and that done by employes of the Communication Dept., in performing signal work, as indicated in the claim.

"As you are the proponent you have the burden of naming the claimants, specifying the dates involved, stating the amount claimed and identifying the work involved in the claim, including information as to

location, type of work, etc. Then, too, the Signalmen's Agreement and Article V of the Agreement of August 21, 1954 contemplate that claims be specific. Your letter of May 3rd does not conform to the requirements of the Agreement. As you have not effected compliance with the Agreement and no appeal of any particular claim has been made by you, any claim which you attempt to assert or appeal by your letter of May 3, 1962 is barred and I am not waiving the bar.

"Any claim which you may have attempted to appeal or assert by your letter of May 3, 1962 is barred and without basis and for these reasons is declined."

This denial was appealed to Carrier's highest designated officer—J. W. Cox, Director, Labor Relations—by letter from the General Chairman which reads:

"Please accept this as appeal from the decision of Mr. H. A. Hudson, Asst. to Vice President, Washington, D.C., who has declined the claim on behalf of those signal employees listed in the claim, to be compensated for all time worked by the contractor and his forces, and that done by employees of the Communication Dept., in performing recognized signal work during the month of January 1962, as specified in the file.

"We certainly do not agree with the contention and decision of Mr. Hudson, because his accusations that I have failed in my letter of May 3rd to conform to the requirements of the agreement, is absurd, as the claim was filed in accordance with the agreement and appealed in line with such requirements. Also he states in part, 'As you have not effected compliance with the agreement and no appeal of any particular claim has been made by you, any claim which you attempt to assert or appeal by your letter of May 3rd, 1962 is barred and I am not waiving the bar.' This statement is not well founded, and only evades the requirements of the August 21, 1954 agreement, Article V(a), in that no valid (sic) reasons were given for denying the claim.

"In fact, Mr. Hudson's declination states, 'Any claim which you may have attempted to appeal or assert by your letter of May 3rd, 1962 is barred and without basis and for these reasons is declined.' Under the circumstances in this particular case the claim should be allowed, as no basic reasons were given for disallowance, and we are not waiving that contention by this appeal.

"The records will show that a proper claim was filed on March 22, 1962 with Mr. J. M. Stanfill who quoted the claim in parts (a) and (b) and did not question the method of filing, but explained his reasons for declining the claim, which was appealed some 22 days later in the usual manner. Therefore, it will be appreciated if you will allow the claim as provided for in Article V of the August 21, 1954 agreement.

"In the event you do not agree with my contention that the claim must be paid under Article V of the August 21, 1954 agreement, and wish to discuss the merits of the claim, I will thank you for your views and decision in the matter."

The Director, Labor Relations denied the Claim:

"This refers to your letter of July 19, 1962, in which you say 'Please accept this as appeal from the decision of Mr. H. A. Hudson, Asst. to Vice President, Washington, D. C., who has declined the claim on behalf

of those signal employees listed in the claim, to be compensated for all time worked by the contractor and his forces, and that done by employees of the Communication Dept., in performing recognized signal work during the month of January 1962, as specified in the file.'

"Article V of the Agreement of August 21, 1954 provides that all claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. It also provides that if a disallowed claim or grievance is appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance. The rule clearly provides that the claimant or claimants be named and that the claim be identified, not only when a claim is presented but when it is appealed as well. Neither your letter of May 3 to Mr. Hudson nor your letter of July 19 to me describes or identifies the claim which you indicate you are attempting to appeal. You have not, therefore, complied with the requirements of the agreement. In fact, the claim which you attempt to assert has not been appealed within 60 days from receipt of notice of disallowance. In this situation, it is barred, and I am not waiving the bar.

"There is no basis for the contention which you make with respect to Mr. Hudson's letter to you of June 29. The letter effects compliance with Article V of the Agreement of August 21, 1954.

"In the last paragraph you say in the event I do not agree with your contention that the claim must be paid under Article V of the August 21, 1954 Agreement and wish to discuss the merits of the claim, you will thank me for my views and decision in the matter. I have no desire to discuss the merits of an alleged claim which you have allegedly attempted to appeal. As I have already stated, you have not effected compliance with the agreement and any claim which you may have attempted to assert in your letter of July 19 is barred and without basis and is accordingly declined."

The position of the Carrier is that at every stage of the appeal procedure, Article V of the Agreement of August 21, 1954, requires that the claim be set forth in the written appeal in the same detail as prescribed in V 1.(a) for initial presentation "to the officer of Carrier authorized to receive same"; and, the failure of Petitioner to do so made it impossible for Carrier's officers to identify the claim that was the subject of the appeal.

We find nothing in Article V that requires that the claim as filed be set forth verbatim in Appeals. When a claim is filed in conformity with Article V 1.(a) all of Carrier's officers are chargeable with constructive knowledge of its content. Certainly, the appeals as presented in this case made sufficient identification of the Claim so as to make it readily identifiable to Carrier's officers considering the appeals and available to them in Carrier's files.

When an appeal is denied Article V requires Carrier to notify "whoever filed the claim . . . in writing of the reasons for such disallowance." Here, Carrier's Assistant to the Vice President, followed by the Director, Labor Relations, elected to abandon consideration of the claim on its merits and stand, solely, on their interpretation and application of Article V. Consequently, the only issue before us is whether Carrier's reason for disallowance is supported by Article V. We find it is not. We will, therefore, sustain the claim as presented.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of November, 1965.