



Award No. 14209
Docket No. SG-14538

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY**

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

(a) The Carrier violated the current Signalmen's Agreement when it required and/or permitted other than signal employees to remove three Train Control Inductors from the track during the week of October 15, 1962.

(b) Mr. J. P. Swinney be allowed two (2) hours at his hourly rate of pay for each of the three Train Control Inductors that were removed and handled by the Roadway forces during the week of October 15, 1962. [Carrier's File: SG-18293]

EMPLOYEES' STATEMENT OF FACTS: At the time this dispute arose, Claimant Swinney was the Signal Maintainer at Oakdale, Tennessee. During the week of October 15, 1962, track forces not covered by the Signalmen's Agreement performed signal work of removing three train control inductors from the ends of crossties on the Oakdale signal maintenance territory. These inductors (signal apparatus) were removed ahead of mechanized track maintenance equipment, and after that equipment passed the inductor locations, Claimant was notified to replace them.

This claim is based on our contentions that removing train control inductors is signal work, that Carrier violated the Signalmen's Agreement when it required and/or permitted other than signal forces to remove train control inductors, and that because of this violation the Carrier should be required to compensate Claimant Swinney for two hours for each inductor that was removed by the track forces, this to be paid to him in addition to what he has already been paid for the days on which the track forces performed the disputed work.

On Oct. 1, 1963, the Brotherhood's General Chairman wrote Carrier's Director of Labor Relations as follows:

"Please be referred to the claim on behalf of Mr. J. P. Swinney, Signal Maintainer, Oakdale, Tenn., where Roadway Forces were used to remove and handle certain train control inductors during the week of October 15, 1962, on the territory of Mr. Swinney.

During our final conference on this case I did not, at that time, have the affidavit from Mr. Swinney certifying that he was not notified by Mr. Meers or any one else when the tamping gang was to be on his territory to surface the track, but I now send you a copy of the affidavit for your file and further consideration of the case, as we will use it in the submission to the Board, if such handling is required.

In the light of this additional information, as contained in the affidavit, it will be appreciated if you will give the claim further consideration and let me know if you will now allow the claim to be paid, or if you decline to alter your previous decision after receipt of the affidavit attached. Sorry that I did not get a copy of the affidavit to you sooner, but it was overlooked by me."

On Oct. 4, 1963, Carrier's Director of Labor Relations responded to the General Chairman's letter as follows:

"Receipt is acknowledged of your letter of October 1 in connection with claim for unearned compensation which you are attempting to assert on behalf of Mr. J. P. Swinney, signal maintainer, Oakdale, Tenn., because maintenance of way employe J. E. Riddle removed three inductors from the ends of crossties on the CNO&TP, one on October 16 and the other on October 17, 1962, consuming from 10 to 15 minutes removing each inductor.

For the record I attach copy of statement made by Mr. Riddle which is self-explanatory and which refutes your various allegations.

The statement allegedly made by Mr. Swinney is vague and indefinite and in my view is of no significance. The fact remains that Mr. Swinney was on duty and under pay when the inductors were removed. Furthermore, he had knowledge that they were to be removed and was therefore derelict and remiss in performing his assigned duties and assuming his responsibilities as signal maintainer. Under the circumstances there is no basis for my changing the decision previously given you. The claim is not valid and is unsupported by the Signalmen's Agreement."

Copy of statement made by J. E. Riddle, marked Carrier's Exhibit B, is attached hereto and made a part hereof.

(Exhibits not reproduced.)

OPINION OF BOARD: On October 16 and 17, 1962, Carrier caused its Track Department employes to move train control inductors from normal positions on the ends of crossties to permit maintenance of the track by roadway machines.

The only material fact in dispute is the matter of Claimant's knowledge of the presence of roadway forces on his assigned territory.

Petitioner contends, and the tenor of the Carrier's submission is, that the work in question is reserved to Signalmen by their agreement. We find, therefore, that claim (a) should be sustained.

Carrier contends that the Claimant was on notice that the roadway forces would work northward from Oakdale beginning October 16th and Petitioner contends to the contrary. In the light of the record as a whole, we are inclined to believe that Claimant was aware of the presence of the roadway forces. This is particularly true with respect to the 17th, since Claimant replaced an inductor on the 16th. Considering this, we hold that Petitioner has failed to meet its burden of proof, and we will dismiss claim (b).

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 of the parties was violated.

AWARD

Claim (a) sustained; Claim (b) dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1966.