

Award No. 14472
Docket No. SG-11916

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, 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 of the current T. & S. Agreement when commencing on April 14, 1958, it allowed persons (2 Foremen, 10 Linemen and 4 Helpers of the Garden State Construction Company) other than those coming within the classifications of the Agreement to perform recognized T. & S. and T. & T. work on the various parts of the Pennsylvania-Reading Seashore Lines.

(b) All employees of the T. & S. Department of the P-R.S.L., including the Foremen, be paid a comparable amount of time, straight and overtime included, for each and every hour that the persons (employees of the Garden State Construction Company) not covered by the T. & S. Agreement were allowed to perform this work mentioned in Claim (a) from April 14, 1958, up to and including such time as the practice is discontinued.

EMPLOYEES' STATEMENT OF FACTS: On March 19 and 20, 1958, a severe snow storm and blizzard occurred in the territory traversed by this railroad, which completely put out of service the communication, signal and power circuits over the entire railroad. In order to restore the railroad to normal operation as soon as practicable, the Carrier contracted with the Garden State Construction Company to provide necessary labor, tools and equipment for emergency repairs to its communication and power lines. The Contractor's employees started work on the Carrier on March 21, 1958.

The emergency was considered over on April 14, 1958, when the Telegraph and Signal Department employees were taken from the storm damaged areas and used to perform routine signal work. However, the Contractor's employees continued to perform work for the Carrier until August 6, 1958, when the contract was terminated.

1958, denied it in a letter dated August 13, 1958. A copy of said letter is attached hereto as Carrier's Exhibit "A".

A joint submission covering the claim was then prepared at the Division Chairman's request, a copy of which bearing the date February 11, 1959, is attached hereto as Carrier's Exhibit "B". The claim was then handled with the General Manager by the General Chairman, and after discussion at a meeting on March 19, 1959, the General Manager again denied the claim in a letter dated May 13, 1959, setting forth the pertinent facts in the matter and stating, among other things, that it was his position an emergency existed during the period of the claim and that the claim, therefore, was without merit; furthermore, that the claim as presented was vague and indefinite and therefore was not presented in accordance with Article V, Paragraphs 1 (a) and (b) of the Agreement of August 21, 1954. A copy of the General Manager's letter of May 13, 1959, is attached hereto as Carrier's Exhibit "C".

Therefore, so far as the Carrier is able to anticipate the basis of the Employes' claim, the questions to be determined by your Honorable Board are whether or not the Signalmen's Agreement, particularly the Scope thereof, was violated by reason of the contractor's forces performing the work in question under the particular circumstances involved; whether the Claimants were aggrieved thereby; and whether they are entitled to the compensation which they claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier moves that the Board dismissed the Claim on the ground that Claimants are not named as required by Article V of the August 21, 1954 Agreement. We find that the identity of Claimants was not only readily ascertainable but was in fact known to Carrier. The motion is denied.

On March 19 and 20, 1958, a severe snow storm and blizzard occurred in the territory traversed by the Railroad, which completely put out of service the communications, signal and power circuits over the entire Railroad. The parties are in agreement that an emergency situation was created. Carrier recalled all furloughed employes; and, in addition contracted with Garden State Construction Company, herein called Contractor, to supply additional labor to repair the damage. Carrier used Contractor's employes from March 21 to August 6, 1958.

The parties are in agreement that the work performed by Contractor's force was work within the Scope of the Agreement which under normal conditions would be reserved to Signalmen.

Signalmen contend that the emergency situation terminated on April 14, 1958 when Carrier's employes were taken off the storm damage work and returned to routine work. Carrier says that the emergency situation continued through the entire period during which Contractor's force was used.

Carrier's defense of "emergency" from April 14 to August 6, 1958, is an affirmative one. Consequently, it was its burden to prove the defense by factual evidence of probative value. The conclusionary statements made by Carrier, not being supported by facts, are not enough to satisfy the bur-

den. Carrier having failed to prove its defense we find that it violated the Agreement as alleged in paragraph (a) of the Claim.

We are convinced from the facts of record that some of the work, if not all, could have been performed by Claimants working a reasonable amount of overtime and on rest days, and holidays. But, we hold that the measure of damage must be assessed on an individual basis instead of as prayed for in paragraph (b) of the Claim. We will, therefore, award that each Claimant shall receive compensatory monetary damages for the additional hours he would have worked, absent the violation, in the period from April 14 to August 6, 1958. In determining the number of additional hours for each employee, his physical ability and availability shall be considered. Cf. Award No. 4233.

For reasons stated and in accord with our holding in Award No. 13738 monetary damage for each Claimant is to be computed by multiplying the number of additional hours he would have worked absent the violation by the applicable overtime rate of pay.

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 Carrier violated the Agreement.

AWARD

Paragraph (a) of Claim sustained.

Paragraph (b) of Claim sustained to the extent prescribed in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May 1966.