

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company that:

(a) The Southern Pacific Company violated the current Signalmen's Agreement effective April 1, 1947 (reprinted April 1, 1958 including revisions), particularly Rules 35 and 70, and Memorandum of Agreement dated October 11, 1961.

(b) The following Western Division Signal Department employees be paid eight (8) hours at their respective rates of pay for each of the following days, August 29, 30 and 31, 1962 — or a total of 24 hours each:

G. O. Smith	Signal Foreman
B. L. Henderson	Lead Signalman
C. R. Vance	Signalman
M. G. Kangris	Signalman
W. Barger	Signalman
L. Asher	Signalman
C. B. Williams	Assistant Signalman
R. Allison	Assistant Signalman
B. Wood	Assistant Signalman

who are all members of Signal Gang No. 5 at Merced, California.

(Carrier's File: SIG 148-83)

EMPLOYEES' STATEMENT OF FACTS: Rule 35 of the Signalmen's Agreement provides that seniority rights of signal employees covered by that agreement are restricted to the territory over which one superintendent has jurisdiction. These separate seniority districts are referred to herein as "divisions."

4. The Salt Lake Division signal gang, previously established on November 10, 1961, and transferred to San Joaquin Division under the provisions of the Memorandum of Agreement dated October 11, 1961, was working at Madera, California, on Carrier's Western Division, in accordance with the provisions of Memorandum of Agreement dated July 28, 1960, when, on August 29, 30 and 31, 1962, that gang was used to perform work in connection with the installation of flashing light signals at several road crossings in the city of Madera. On those dates, claimants in this case, assigned to Western Division Signal Gang No. 5, were engaged in work connected with the CTC project between Lathrop and Fresno on the Western Division.

5. By letter dated September 18, 1962 (Carrier's Exhibit B), Petitioner's local chairman submitted claim on behalf of named signalmen assigned to Western Division Signal Gang No. 5 located at Merced, California, alleging they should have been used to perform the work mentioned above at Madera on the Western Division that was performed by signal employees of the Salt Lake Division while the latter were temporarily working on the Western Division. Carrier's Division Superintendent denied the claim by letter dated November 1, 1962 (Carrier's Exhibit C). Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel by letter of November 21, 1962 (Carrier's Exhibit D), and the latter denied the claim by his letter of January 14, 1963 (Carrier's Exhibit E).

(Exhibits not reproduced.)

OPINION OF BOARD: Under date of October 11, 1961, the Carrier and the Petitioner entered into a Memorandum of Agreement concerning the establishment of a number of additional signal construction gangs required in connection with CTC (Centralized Traffic Control) construction activities to begin on the San Joaquin Division and to be later progressed over other divisions as work was completed.

The instant Claim is for compensation for Western Division signal employees for the amount of time Salt Lake Division signal gang employees were working on crossing signals in the Western Division. The Claimants contend that, under Rule 35 of the Agreement, Western Division employees have an exclusive right to all signal work in their Division; they further contend that under the October 11, 1961, Memorandum of Agreement the Salt Lake Division gang were confined to CTC construction or work incidental thereto, only, and should not have been permitted to perform anything but CTC construction work away from the Salt Lake Division.

Following is the rule:

"RULE 35. SENIORITY RESTRICTIONS.

Seniority rights of employees shall be restricted to the territory over which one superintendent has jurisdiction, except as may be provided by agreement pursuant to Rule 36."

Carrier, on the other hand, contends that Rule 35 has no present application to the situation involved here, as it was amended by the Memorandum of Agreement dated July 28, 1950, which Carrier insists clearly allows Carrier to use signal gangs off their seniority districts to perform Signal Department work when the requirements of the service so dictate.

The July 28, 1950, Memorandum of Agreement provides in part, as follows:

"The requirements of the service occasionally necessitate the temporary transfer of signal construction and repair gangs (assigned to outfit cars) to divisions other than the divisions on which the members thereof hold their seniority (hereinafter referred to as the home division) for indefinite periods of time. The seniority of the employees in such gangs is restricted to their home division; . . ."

There then follow, in the Memorandum Agreement, a number of paragraphs concerning employees who are to be transferred from their own seniority districts to other Divisions and relating, generally, to the method of transfer, protection of their seniority and compensation. In paragraph 8 of the Memorandum of Agreement we note the following:

"This Memorandum of Agreement shall be construed as supplementing and modifying Rules 35 and 61 of the current agreement..."

It would appear, that under the terms of the June 28, 1950, Memorandum of Agreement, signal gangs transferred to Divisions outside their own seniority could perform any and all signal work assigned to them.

It is apparent that there is but one issue to be resolved herein and that is — Did the Carrier violate the Memorandum of Agreement of October 11, 1961, when the signal gangs set up pursuant to that Agreement performed the items of work described in the Claim?

Fundamentally, what we are here concerned with is an interpretation of the October 11, 1961, Memorandum Agreement. The first paragraph of the Agreement provides, as follows:

"On or about October 16, 1961, the establishment of a number of additional signal construction gangs assigned to outfit cars and/or trailers will be required in connection with CTC construction activities which it is anticipated will be begun on the San Joaquin Division and later progressed over other divisions as work is completed."

This preliminary paragraph indicates the necessity of establishing additional construction gangs in connection with CTC construction activities. It is significant that it did not provide that these gangs were to be confined exclusively to CTC work, nor is there any express provision anywhere in the Agreement confining these travelling construction gangs solely to CTC work.

The second paragraph commences with these words: "It is understood." There follows in the paragraph a recital as to how the gangs will be advertised and a provision as to the compensation to be allowed for travel time and necessary expenses and concludes finally with the following declaration:

". . . it is further agreed that thereafter the application of agreement provisions to these gangs will be in accordance with the provisions of Memorandum of Agreement between the parties hereto dated July 28, 1950, appearing on page 63 of the agreement booklet."

As has been previously indicated in this opinion that under the terms of July, 1950, Memorandum of Agreement, signal gangs transferred to divisions outside of their seniority districts can perform any and all signal work assigned to them and, as at the conclusion of the October 16, 1961, Agreement, we have the positive affirmation that "the application of agreement provisions to these gangs will be in accordance with the provisions of Memorandum of Agreement hereto date July 28, 1960" and there being no other provision in the Agreement confining the signal work to be performed by the Salt Lake Division exclusively to CTC work we must reach a conclusion that there has been no violation of the agreement.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December 1966.