



Award No. 17175

Docket No. SG-17167

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railroad Company that:

(a) Carrier violated the Signalmen's Agreement, when, on May 18, 19, and 20, 1966, supervisory personnel not covered by that agreement installed, revised, and tested signal circuits in connection with the replacement of a traffic control bungalow at Albion, Indiana.

(b) The following employes be allowed an amount of time at their individual applicable rates of pay equal to that consumed by supervisory forces in performing the signal work at issue.

F. L. Falk	Foreman	Gang No. 5
J. Allen	Signalman	Gang No. 5
M. Allen	Signalman	Gang No. 5
W. Stevens	Signalman	Gang No. 5
D. Guilford	Leading Maintainer	Garrett, Indiana
J. Bayliss	Maintainer	Garrett, Indiana
L. Walker	Assistant	Garrett, Indiana
N. Moore	Maintainer	Garrett, Indiana
G. Schlotterback	Maintainer	Albion, Indiana

EMPLOYES' STATEMENT OF FACTS: This dispute is a result of Carrier's use on the Chicago Division Seniority District of supervisory and inspection personnel under the jurisdiction of Signal Engineer A. L. Jordan at Baltimore, Maryland, to make revisions, change resistor boards, adjust tract circuits, and similar work, within the outside traffic control territory. In many instances where such work was performed, no employe members of the construction and/or maintenance forces were present.

These conditons were brought to the attention of Mr. Jordan by General Chairman H. C. Guscott in a letter dated April 19, 1966, reproduced herein as Brotherhood's Exhibit No. 1. Mr. Guscott stated that he realized, under the Agreement, certain tests and inspections could be performed by supervisory and engineering forces but the work at issue went beyond that point. He requested Mr. Jordan to dsicontinue the use of his supervisors for such work and to have it done by employes covered by the Agreement.

OPINION OF BOARD: Due to a derailment at Albion, Indiana, on May 14, 1966, a signal bungalow was destroyed. The replacement bungalow was prepared at Cumberland, Maryland and shipped to Garrett, Indiana, where it arrived in the evening of May 18. After further wiring was done, the bungalow was moved to Albion and placed in service on May 20, 1966.

A total of twelve employees covered by the Agreement worked on the project between May 17 and May 20, 1966. In addition to the employees covered by the Agreement four supervisory personnel were present on the project. Claim is made on behalf of nine of the twelve employees who worked on the project that they "... be allowed an amount of time at their individual applicable rates of pay equal to that consumed by the supervisory forces in performing the signal work at issue."

Claimants proof fails in the following regards:

1. It was not proven by a preponderance of the evidence that the supervisory personnel installed, revised and tested signal circuits in connection with the replacement of a traffic bungalow at Albion, Indiana.

2. Even had it been proven that the supervisory personnel were installing, revising and testing circuits in connection with the replacement of the traffic bungalow in violation of the Agreement, there is no evidence in the record as to how much time was consumed by such supervisory personnel in performing such prohibited work; consequently, there would be no basis on which to determine the amount of compensation due each Claimant.

For these reasons the claim is denied.

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 was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1969.

Dissent to Award 17175, Docket SG-17167

During handling on the property the Employees presented notarized statements to the effect that officials did perform scope work. For some strange reason Carrier did not see fit to challenge these statements while the case was still on the property. The first challenge of the facts came in Carrier's Ex Parte Submission and then in the form of bald assertions by the author of Carrier's Ex Parte Submission. Nevertheless, the Majority saw fit, in the face of this state of the record, to premise its conclusion on an alleged lack of evidence that officials did scope work.

The treatment given this case does not reflect mature handling; therefore, I dissent.

/s/ G. Orndorff
G. Orndorff
Labor Member