

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former New York, Chicago and St. Louis Railroad Company that:

On behalf of Leading Maintainer G. M. Harshbarger, Fort Wayne, Indiana for two (2) hours' pay at the overtime rate account on January 14, 1968, employees who hold no seniority in the Signal Department performed work and replaced defective fibre insulation in an insulated joint in the vicinity of Runnion Avenue in Fort Wayne. (Carrier's File: 30-21-26.)

EMPLOYEES' STATEMENT OF FACTS: Mr. G. M. Harshbarger is a Leading Signal Maintainer whose assigned position in the employment of the respondent Carrier is the maintenance of a signal territory (section of the Carrier's signal system) which includes the Carrier's signals at Fort Wayne, Indiana.

On or about February 14, 1968 employees in the Carrier's track department performed certain work on insulated rail joints, including replacement of fibre insulation, in the vicinity of Runnion Avenue, Fort Wayne, in the absence of a signal department employe and without giving required notice to such employe. Thereupon, Claimant filed a claim for pay at overtime rate for two hours because of being deprived of his right to perform signal work.

As indicated by our Exhibits No. 2 through 7, attached, this dispute was handled in the usual and proper manner by the Brotherhood on the property, up to and including the highest officer of the Carrier designated to handle such dispute without reaching a satisfactory settlement.

An agreement between the parties to this dispute, bearing an effective date of March 1, 1952, as amended, is by reference thereto made a part of the record in this dispute. Pertinent to this dispute are the following rules:

"RULE 1. SCOPE

This agreement governs the rates of pay, hours of service, and working conditions of all classes of employees enumerated in Rules 2,

"I have considered your position in respect to this case but do not agree that any rules of the applicable agreement were violated. Because the services of Signal Department employees were not indicated or required in this case, none were called out.

I do not find that the track forces involved in this claim performed any service not customarily performed by them or of a nature that is reserved exclusively to members of the craft you represent.

For the above reasons the claim is held to be without merit and is accordingly denied." (Emphasis ours.)

Following conferences of August 23 and September 19, 1968, the Manager-Labor Relations affirmed his denial of July 5, 1968, by stating, in part, in his letter of October 14, 1968. (Attachment "H.")

"I do not find that Engineering Department Circular No. 7, re-issued July 15, 1949, reserves the work in question to your craft."

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant filed his own claim with Carrier as follows: "Claim for 2 hours time at OT rate account welder and trackmen working on insulated joint, building railends and renewed bad fiber, without Signal employe present. Joint located on westbound track, south rail, around 300 feet west of Runnion Avenue crossing." The Organization thereafter relied upon the provisions of Circular No. 7, when the Organization's General Chairman, John Chatlock, in his letter of March 4, 1968 to Carrier's Regional Engineer, J. F. Holmberg, stated, in part: "Circular No. 7 issued May 21, 1941, and after several revisions, re-issued July 15, 1949, places the responsibility of inspecting these joints and the protection of the signal system on the signal maintainer. This practice has been followed in the past. . . ."

Carrier's Manager of Labor Relations, Howard Odom, by letter dated October 14, 1968 addressed to the Organization's General Chairman, Mr. Chatlock, stated in part: "I do not find that Engineering Department Circular No. 7, re-issued July 15, 1949, reserves the work in question to your craft. . . ."

Carrier sets forth two alleged procedural defects in regard to the processing of this claim, namely, (a) that the Organization failed to allege the violation of any Agreement rule by Carrier in the Statement of Claim, and (b) that the date cited in the Petitioner's Statement of Claim before the Board is not the same date involved on the property.

First, in regard to the alleged failure of the Organization to allege the violation of any rule in the Agreement by Carrier in the Statement of Claim, it is seen that this contention or charge was not at any time raised on the property by Carrier, and thus it cannot be now considered herein by this Board.

Second, in regard to different dates cited on the property and before this Board, we find that Carrier was not misled or prejudiced thereby so as to prevent Carrier from properly defending against this claim, and therefore this contention is without merit and must be denied.

In regard to the merits, the Organization, in its ex parte submission to this Board, for the first time alleges that the Scope Rule and Rules 4 and 5

of the Agreement were violated by Carrier in this instance. However, the Organization failed to allege that said Rules were violated on the property, and failing to do so prohibits this Board from considering herein such a contention or charge in the determination of this dispute.

The Organization on the property contended that Carrier violated Circular No. 7 as re-issued by Carrier. However, Circular No. 7 is not a rule of the Agreement, but merely instructions given by Carrier in regard to a particular aspect of the operations of its Railroad.

Therefore, inasmuch as the Organization has failed to sustain its burden of proving a rule violation, we must deny the claim.

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.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1970.