



Award No. 18318
Docket No. SG-18537

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

FORT WORTH AND DENVER RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Ft. Worth and Denver Railway Company:

On behalf of Signal Maintainer C. W. Oatery for 16 hours at punitive rate account CB&Q Communications employe and employe of Canada Electrical Manufacturing Company installing equipment in the telegraph office at Wichita Falls, Texas, on March 3, 1968.
[Carrier's File: SG-23]

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties to this dispute bearing an effective date of November 1, 1946, as amended, which by reference is made a part of the record in this dispute. Of particular pertinence to this dispute are the following provisions thereof: (Lateral Agreement found at page 28 of agreement booklet):

"LATERAL AGREEMENT

In the execution today of agreement by and between Fort Worth and Denver City Railway Company and The Wichita Valley Railway Company, on the one hand, and Brotherhood of Railroad Signalmen of America, for the Employes, on the other hand, covering rates of pay, rules and working conditions to govern signal department employes, with effective date of November 1, 1946.

IT IS AGREED:

1. The present agreed performance of dual or combination signal work and telegraph work is continued. Signal employes, when assigned to do so by the Carrier, will perform the dual or combination work of installation, maintenance, repairs and construction of signal apparatus, referred to as signal work, and the installation, maintenance, repairs and minor construction of communication circuits, such as telegraph and telephone, etc., and equipment and appurtenances thereto, referred to as telegraph work. Signal employes who perform this dual or combination service will be rated and classified as signal employes."

On May 1, 1968, Claimant C. W. Oatery, Signal Maintainer, Wichita Falls, Texas, filed claim for 16 hours at punitive rate, as a result of the above transaction. This claim was declined by the auditor in letter dated June 28, 1968. The Organization subsequently appealed the claim in letter dated July 14, 1968 to Mr. M. M. Shultz, Superintendent Communications and Signals, and Mr. Shultz declined the claim in letter dated August 26, 1968. The General Chairman appealed the claim to the Carrier's highest designated officer in letter dated September 24, 1968. The case was subsequently discussed in conference on October 28, 1968, and the Carrier declined the claim in letter dated November 15, 1968. The General Chairman rejected the Carrier's decision in letter dated May 10, 1969. See Carrier's Exhibits Nos. 1 through 7, attached hereto.

A copy of the currently effective schedule agreement between the Brotherhood of Railroad Signalmen and Fort Worth and Denver Railway Company effective November 1, 1946 is on file with your Board and is made a part hereof.

(Exhibits not reproduced.)

OPINION OF BOARD: The manufacturer of a CAE unit with the concurrence of Carrier attached the unit to a data phone by a pair of wires for the purpose of demonstrating its function.

Carrier did not own, lease or rent the unit.

The demonstration proved that the unit was not compatible with Carrier's equipment. The manufacturer disconnected and removed the unit.

Petitioner claims that the connecting to and disconnecting from the data phone of the two wires was work exclusively reserved to Signalmen.

The issue raised is squarely in point with that which we resolved in Award No. 11332 wherein we held:

It appears to the Board, however, that the work claimed as a matter of right under the Agreement was only incidental to the sole purpose here sought to be accomplished — to demonstrate the usefulness and effectiveness of new equipment under actual operating conditions. No work was contracted out; no leasing arrangements were made; no charges by Nordberg for the service performed were levied. There is no evidence in this record that the demonstration was arranged by the Carrier and Nordberg to avoid having the work of surfacing track performed by covered employees. (See Second Division Award 2377.)

Under the factual situation present here, the claim is not supported by the Agreement and, therefore, must fail. (Emphasis ours.)

Compare with Award No. 16863 and 17216 in which certain work was performed by suppliers in satisfaction of warranties.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of December, 1970.