Award No. 18959

Docket No. SG-15828

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, 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 Carrier violated the current Signalmen's Agreement (effective April 1, 1947; reprinted April 1, 1958, including revisions) when it failed and/or declined to apply the Scope Rule, resulting in violation of Rule 70, on July 14, 1964, by assigning work of removing signal bond wires from rails at Draper and Cottonwood, California, to employes not covered by the Signalmen's Agreement.

(b) Mr. R. F. Hands, Signal Maintainer, Red Bluff, California, be allowed four (4) hours at his overtime rate of pay for July 14, 1964.

(Carrier's File: SIG 152-170)

EMPLOLYES' STATEMENT OF FACTS: This claim is a result of the Carrier's action of requiring and/or permitting other than signal forces to cut and remove bond wires prior to the changing of rail, at a time when no signal employe was present. The basic contention of the Brotherhood is that such work (cutting and removing bond wires from a track circuit) accrues to signal forces classified in and covered by the Signalmen's Agreement.

On July 14, 1964, track forces cut bond wires and changed out rails at Draper and Cottonwood, California, without having a signal employe present to take care of the signal work (bond wire removal and replacement).

Under date of July 18, 1964, the Brotherhood's Local Chairman presented a claim on behalf of Signal Maintainer R. F. Hands for four hours' overtime pay because of the disputed signal work having been performed on his territory. The claim was subsequently handled in the usual and proper manner on the property, up to and including conference discussion with the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement. Pertinent correspondence exchanged during the handling of this dispute on the property is attached hereto as Brotherhood's Exhibit Nos. 1 through 6.

There is an agreement in effect between the parties to this dispute, bearing an effective date of April 1 1947 (reprinted April 1, 1958, including

revisions), as amended, which is by reference made a part of the record in this dispute. (Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS:

1. There is in evidence an agreement (hereinafter called the current agreement) between the Carrier and its employes represented by the Petitioner, having effective date of April 1, 1947 (reprinted April 1, 1958, including revisions), a copy of which is on file with the Board and is hereby made a part of this submission.

2. On the date of this claim, July 14, 1964, Maintenance of Way track forces changed out rails at Draper and Cottonwood, California.

As it was necessary that bond wires on the rails being changed out be cut, M of W extra gang Foreman Cody, in accordance with the customary method of arranging such matters, contacted Signal Maintainer Wall at Red Bluff, the maintainer for that district, and arranged with Wall that he be presented when the above work was to be performed. On the date of the within claim Mr. Cody proceeded to the job sites and went ahead with the changing of rail anticipating the signal mantainer's arrival to assist in the work, in accordance with his previously made arrangements. However, subsequent to the oral conversation between the M of W Foreman and the Signal Maintainer, Mr. Wall and Mr. Hands (hereinafter referred to as claimant) exchanged their maintainers' positions, and since claimant did not appear at either of the locations (Draper or Cottonwood) to assist the M of W forces on July 14, 1964, it is apparent that he hand not been informed by Wall of the arrangements made.

3. By letter dated July 18, 1964 (Carrier's Exhibit "A"), Petitioner's Local Chairman submitted a claim to Carrier's Division Superintendent, alleging that carrier violated the current agreement by allowing Maintainer of Way forces to remove signal bond wires while in the process of renewing rails without a signalman present. Carrier's Division Superintendent denied the claim by letter dated September 11, 1964 (Carrier's Exhibit "B"). By letter dated October 14, 1964 (Carrier's Exhibit "C"), Petitioner's Local Chairman informed Carrier's Superintendent that the claim would be handled further by the General Chairman.

By letter dated October 21, 1964 (Carrier's Exhibit "D"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel. Carrier's Assistant Manager of Personnel denied the claim by his letter of November 24, 1964 (Carrier's Exhibit "E"). (Exhibits not reproduced.)

OPINION OF BOARD: On the date of this claim, July 14, 1964, Maintenance fo Way track forces changed out rails at Draper and Cottonwood, California.

It was necessary that signal bond wires on the rails being changed out be cut, and M of W extra gang Foreman Cody contacted Signal Maintainer Wall, then maintainer at Red Bluff, arranging with him that he be present when the subject work was to be performed. On the date of the claim Mr. Cody proceeded to the job sites and went ahead with the changing of rail anticipating the signal maintainer's arrival to assist in the work, in accordance with his previously made arrangements. However, subsequent to the oral conversation between the M of W Foreman and Signal Maintainer Wall, he and Mr. Hands

(claimant) exchanged their maintainer's positions, and claimant did not appear at either of the locations to assist the M of W forces. It is not shown that other than signal employes reinstalled the bonds.

The Petitioner contends thtat under the Scope Rule of the controlling Agreement, work on bond wires accrues to signal forces, and that the Carrier's reason for denying the claim is not valid.

The Carrier contends that it was through no fault or negligence on its part that the signal employe failed to appear.

The Employes do not deny the truth of the Carrier's contention, and this Board has previously held that a party cannot urge his own failure in support of his position. Hence, we must find that under the circumstances of this incident the Agreement was not violated and deny the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January, 1972.

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