

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19595
Docket Number SC-19343

Irvin M. **Lieberman**, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad **Signalmen**
(**Southern** Pacific Transportation company
(Pacific Lines)

STATEMENT OF CLAIM: Claims of the General **Committee** of the **Brotherhood** of Railroad Signalman on the Southern Pacific **Transportation** Company (former Pacific Electric Railway Company) that:

Claim No. 1

(a) The Southern Pacific Transportation Company violated the current Agreement **between** the former Pacific Electric Railway **Company** and its Employees, represented by the Brotherhood of Railroad **Signalmen**, effective September 1, 1949 (including revisions), particularly the Scope Rule.

(h) Messrs. W. **Easterman**, R. **Minard**, J. Duff, C. Hurt, P. Meders and J. **Shumate** be allowed **eight** (6) hours at their **respective** basic daily rate of pay for September 26, 1969, in addition to compensation **previously** allowed for that date.

/Carrier's File: SIG 152-264/

Claim No. 2

(a) **The** Southern Pacific Transportation **Company** violated the current Agreement between the **former** Pacific Electric Railway **Company** and its **Employees**, represented by the Brotherhood of Railroad **Signalmen**, effective September 1, 1949 (including revisions), particularly the Scope Rule.

(b) Messrs. W. **Easterman**, R. Minard, J. Duff, C. Hurt, P. Meders, and J. **Shumate** be **allowed** eight (8) hours at their respective basic daily rate of pay, in addition to other compensation previously allowed for October 21, 1969.

Barrier's File: SIG 152-265/

OPINION OF BOARD: Claimants are employed **in** Carrier's Signal Department. On September 26 and October 21, 1969, in connection with moving an oversized barge-like piece of **equipment** (for over-seas shipment) **along** city streets in Long Beach, California, employees of Contractors Cargo Company removed and reset Carrier's **Signal Flasher** (a highway crossing protection device) at 7th Street and **Pico** Avenue to make **room** for passage.

Petitioner claims (without denial by the Carrier) that under the Agreement the work of **removing** and resetting the Flasher was reserved to Carrier's Signal Employees. The Organization claims that "in allowing the **employees** of Contractors Cargo to perform signal work" the Carrier violated the **Agreement**.

The record contains no probative evidence that the Carrier authorized or "allowed" the work in question to be **performed** by employees of Contractors Cargo; the Carrier denies that it gave **any permission** or authority for the work. There is even **some** question **as to** Carrier's knowledge **of** the work till after the fact.

In Award No. 18626 we held:

"...if any work was performed on Erie-Lackawanna property or equipment, it was performed without the consent or agreement of Erie-Lackawanna Railroad. Therefore, the burden of proof shifted to the Organization to disprove Carrier's contentions. The record is void of any such proof and it must be concluded that the Organization has failed to sustain its burden. To hold Carrier responsible for Monon's unauthorized act would place Carrier in an indefensible position. See Awards 9847, 10549, 12907, 14888, and 14889 among many others."

We shall reaffirm the position which we have taken in a long line of cases that conduct of third parties which is not authorized by the Carrier cannot serve as a proper basis for claims such as in this case.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1973.