

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20321
Docket Number SG-20134

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: { **Brotherhood of Railroad Signalmen**
(The **Chesapeake and Ohio Railway Company**
(**Chesapeake District**))

STATEMENT OF CLAIM: **Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District) that:**

(a) **The Carrier violated the current Signalmen's Agreement, particularly Scope Rule 1, on August 6 and again on August 19, 1971, when it assigned or allowed employees not covered in said Agreement to remove, transport, and hook back-up an electric motor used to power one of the air compressors that supply air to the retarders at Stevens Rump, Ky. As a result, we now ask that**

(b) **The Carrier pay Signal Maintainer H. H. Clark and Signal Maintainer Helper E. V. Cotcamp a total of four (4) hours each at their time and one-half rates of pay for the violation cited in part (a) of this claim. [Carrier's File: 1-SG-299]**

OPINION OF BOARD: **Carrier utilized employees not subject to the Agreement between the parties to perform certain work dealing with air compressors used for supplying air which operates car retarders.**

The Organization alleges a violation of its Scope Rule:

"This agreement covers rates of pay, hours of service, and working conditions of all **employees** engaged in the maintenance, repair and construction of...car retarder systems..."

The **Organization** relies upon Award No. 9210 (McMahon) which resolved a dispute between these **same** parties. In that Award, which considered the same Scope Rule, the **Board** considered certain labor required in wiring two 75 horsepower compressor **motors**, which motors were to be used to operate air compressors necessary for operation of the car retarder system. The Board noted that the Agreement provided for the maintenance, repair and construction of **car retarder systems**, and it contained no exceptions or **modifications**. The Board concluded that the Scope Rule did not limit, **in any manner**, the size, capacity, or installation of electric motors, such as were under consideration **in** that case.

In the instant dispute, it appears that we are concerned with a 250 horsepower compressor. The Carrier asserts that the compressor furnishes air for use in the car retarder system, but it is not **an** integral part of that system because it also provides air for other purposes. The Organization **counters** by stating that the prime purpose of the compressor is to **operate** the retarder system.

We have carefully considered the assertions of the parties **and** the cited Awards. We do not feel that Award No. 12411, between these parties, disposes of the issue; but rather that Award No. 9210 controls. We are unable to determine a significant difference between the type of claim submitted there and the **one** here **under** consideration, especially when **one** notes that the Scope Rule does not limit the size, capacity or installation of electric motors.

In **any** event, another factor compels us to refuse to deny the claim. It was noted, while the matter was considered on the property, that "This case involves the same overall principle as involved in several other **grievance** items which have been recently filed...". In its Submission to the Board, the Carrier points to the similarity between this claim **and** claims submitted here in Dockets SG-19574 and SG-19658. **This** Board has issued Awards in both Dockets (19850 **and** 19852). The Board held that Docket SG-19574 was "...almost on all fours with that involved in Award No. 9210, between the same parties and involving the same agreement in a similar issue." The Award **concerning** Docket SG-19658 **sustained** the **claim** for the **same** basic reasons.

It has long been held by this Board that we should **not**, at a later date, with a different Referee participating, substitute our judgment for that in a precedent Award, unless we are **unequivocally** convinced **and can find** that the prior judgment is without support. See Award 11788 (**Dorsey**) for **example**. This is **significantly** the case when the **same** parties **and** same **Agreement** provisions are involved. **Upon** a review of the prior Awards between the parties (**and** having **contem- plated** Awards dealing with similar issues **concerning** other Carriers) we are not convinced that Awards 19580 **and** 19582 are palpably **erroneous**.

Notice was given to **the International** Brotherhood of Electrical Workers. The Board has fully considered **their** contentious as presented to the Board.

Concerning the claim for compensation, the Carrier **notes** that the Claimants were **on** duty **and** under pay at the time, and **con- sequently** urges that no **Damage** Award be issued. This Referee has

previously determined, on a number of occasions, that full employment is not a deterrent to awarding damages. However, we note that Claimants seek **time and** one-half rates of pay as a remedy. As we review the Docket in its entirety, we see no basis for a Damage Award of premium pay. Accordingly, we will only **sustain** the claim to the extent of requiring payment at the straight time rate of pay.

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** violated.

A W A R D

Claim (a) sustained.

Claim **(b)** sustained to the extent-set forth in the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third** Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this **12th** day of July **1974**.