

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21436
Docket Number SG-21448

Irwin H. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad **Signalmen**
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad Company:

(a) Carrier violated the current **Signalmen's** Agreement as amended particular Rule 1 Scope **when** it required and/or permitted Roadway Forces to remove Bootleg **connections** and bond wires at River Road, Ropewell, Virginia **on May 7, 1974**.

(b) Carrier should now be required to compensate Signal Maintainer D. **L. Benton** for a **minimum** call of two hours and forty minutes at one and one half times his regular rate of pay.

[Carrier file: 15-1(74-3)J]

OPINION OF BOARD: There is no dispute concerning the work involved in this case since both parties agree that it is work coming under the Scope Rule of the applicable Agreement. The issue at bar is whether or not Claimant was notified to be present at River Road in **Hopewell**, Virginia on May 7, **1974** to assist **in** replacing a section of defective welded rail.

The record in this case indicates only two relevant pieces of information, or evidence, which bear directly on the factual dispute. There **is** a statement dated **June 7, 1974** signed by the supervisor, F. G. Cutts, to the effect that he notified **Claimant** of the work in question on the afternoon of **May 6th**; there is also a statement by Claimant, dated September **14, 1974** indicating that *he was not notified on May 6th* as Carrier contends. The resolution of this factual disagreement is determinative of the entire dispute.

This Board has **no** way of resolving an irreconcilable dispute on facts. We have been faced with such situations many times and have held consistently that **under** such **circumstances** the claim must either be denied or dismissed. In Award **15588** we said:

"This Board has only appellate jurisdiction. We have neither the duty or authority to **weigh** the evidence presented **during** the handling on the property. When we are faced with an irresolvable conflict of facts we are forced to dismiss the Claim. "

Similarly, in the instant case, since we have no means of resolving the factual conflict we **will** dismiss 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 facts are in dispute.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1977.

