

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21725
Docket Number SG-21588

Robert W. Smedley, Referee

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

STATEMENT OF CLAIM: Claim of the General **Committee** of the Brotherhood
of Railroad Signalmen on the Southern Pacific
Transportation Company:

(a) The Southern Pacific Transportation Company has violated **and** continues to violate the current agreement between the (former Pacific Electric Railway Company) and its **employees** of the Engineering Department, represented by the Brotherhood of Railroad Signalmen, effective September 1, 1949 and (including revisions), particularly the Scope Rule and Rule 6 of Article 1, when it allowed and continues to allow Southern Pacific Signal **Department Employees** at the Los Angeles **and** Sacramento Southern Pacific Signal Shops who are not **covered by** nor hold any rights under the current (former Pacific Electric Railway Company) Agreement to perform work that properly belongs to former Pacific Electric Signal Employees.

(b) Mr. Ochoa be allowed additional compensation for eight hours per day at the straight time rate for a Relay Repairman for every work day and holiday commencing with **September 17, 1974** and continuing until Position No. 9, Relay Repairman, **is** restored at **Macy Street Yards**, Signal Shop, Los Angeles, California. /Carrier's file: SIG **176-47**

OPINION OF BOARD: We have reviewed the record in this case thoroughly and find that it seems to center around a dispute over the Carrier's alleged transfer of signal work from **its** former Pacific Electric Railway Shops to its Los Angeles Shops. /However, the most we can discern from the entire statement of facts and position of Petitioner, both in on the property handling and its presentation before the Board, are general allegations and **an** inference that the action in question violated the Scope Rule and Article I of the Agreement between the parties.

We are thus left with vague and indefinite **conclusionary** statements; without direct evidence to consider in reaching a determination of this dispute. Nowhere in the handling of this claim was there any probative data furnished showing how claimant was affected, what duties were performed improperly or what specific, particular assignment of work allegedly violated the rules cited by the Petitioner.

Circular No. 1 of the National Railroad Adjustment Board, issued October 10, 1934, states under "FORM OF SUBMISSION":

"Statement of Claim: Under this caption the petitioner or petitioners must clearly state the particular question upon which an award is desired."

The claim does not **allege how** claimant was harmed, thus failing to meet this test.

In numerous Awards, we have clearly recognized that the burden of establishing all the essential elements of a claim must be met by Petitioner. In our Award 19960, with Referee **Lieberman**, we held:

"Nowhere in the handling of this Claim on the property was there any data furnished as to how claimants were affected, what duties were performed improperly, when they were performed, or how two claimants could each have a claim involving one position. Carrier concludes that the claim is improper under the provisions of Rule 33 (adopting the provisions of Article V of the August 21, 1954 National Agreement).

"Carrier's position with respect to the deficiency of the claim is well taken. The Board has held in numerous Awards that the burden of establishing all the essential elements of a claim must be met by Petitioner. In Award 16675 we said:

"'...**The** awards emanating from this Board establishing the principle that claims must be specific and that Carrier is under no obligation to develop the claim for the petitioner are too numerous to mention. Suffice it to say that the principle is well established and not subject to dispute. The burden is on Petitioner to present facts sufficiently specific to constitute a valid claim. The vagueness and indefiniteness of the instant claim is therefore fatal and renders a proper adjudication of the merits impossible.

"'We will dismiss the claim'

"In this case also, we must dismiss **the** Claim."

Similarly, in Award 19833, we held:

"This Board is fully aware of the very serious consequences of a Scope Clause. Surely a Carrier must refrain from removing work from a class when it has agreed to refrain from said action by contractual language, but just as surely, a Carrier must not be found guilty of such a severe violation without **more** than a **conclusionary** allegation, supported by a few isolated assertions which fail to specify with any degree of certainty the specific nature, times and amounts of removal. The burden of proof rests with the organization. That burden exists for the protection of both parties as well as the Board and it is incumbent upon the Claimant to produce sufficient evidence to support the version of the facts upon which it relies. See AWARD 10067 (Weston). Here, we have just a fleeting glimpse of the asserted facts.

"**The** record does not reveal the particular work or amounts of it allegedly wrongfully taken from clerks. Clerks' submission consist only of statements of ultimate facts not proven by substantial evidence of probative value. The burden of proof is clerks. It failed to satisfy the burden. We, therefore, must deny the claim. AWARD 14682 (**Dorsey**)'

"The claim is vague and indefinite, and the Organization, being the proponent, always has the obligation of presenting factual evidence to substantiate its claim and this must be done by a preponderance of evidence. This the organization has failed to **do.*******The** evidence presented in the instant case is not sufficient to warrant a sustaining award. We will dismiss the claim. AWARD 15536 (**McGovern**)'"

See also AWARDS 15765 (**Harr**), 16174 (**Heskett**), 16486 (**Perelson**), 16675 and 16676 (**McGovern**), 16870 (**Utter**) and 13848 (**Kornblum**).

Determinations of Rule violation should, whenever possible, be made on the specific merits of **each** individual case. In that manner, in the final analysis, all parties are better served. Unfortunately, in the case at issue, this Board is unable to consider and discuss the dispute in that light inasmuch as we have before us only ultimate conclusions, without factual demonstrations sufficient to base a determination. In short, the claim must be dismissed because the Organization failed to submit factual evidence for our consideration.

We thus find the contentions of the Carrier on this issue well taken, and we are compelled to dismiss this claim on the basis that this vague, speculative and non-specific presentation fell far short of meeting Petitioner's burden **of proof**.

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;

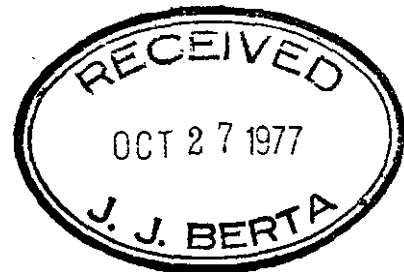
That the Carrier and the Employees involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim must be dismissed.

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 29th day of September 1977.