NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22071
THIRD DIVISION Docket Number SG-22030

Robert A. Franden, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Norfolk and Western

STATEMENT OF CLAIM: Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk and Western Railway Company -- the former New York, Chicago and St. Louis Railroad Company:

Claim No. 1

(A) The Carrier violated the rules of the current Signalmen's Agreement, in particular the Scope, when employees not covered by the Signalmen's Agreement, performed signal work at the Car Retarder Plant, Bellevue, Ohio.

(B) The Carrier now pay Signal Maintainers K. E. Beckett, B. Pierce, D. R. Hall, Ellis Smith, and Assistant Signal Maintainers J. H. Kidd and L. A. Homer, at their overtime rate of pay for all hours that Maintenance of Way Employees performed signal work for the violation cited in part (A).

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Claim No. 2

(A) The Carrier violated the rules of the current Signalmen's Agreement, in particular the Scope and Rule 6, when employees not covered by the Signalmen's Agreement performed signal work at the Car Retarder Plant, Bellevue, Ohio.

(B) The Carrier now pay Leading Signalmen R. A. Simmons and Frank Jones, Jr., one hundred and eighty (180) hours each at their overtime rate of pay for the violation cited in part (A).

OPINION OF BOARD: The operative facts in this case are not in dispute. During the period of time from April 29, 1975 to June 3, 1975, Carrier utilized Maintenance of Way welders to perform 178 man hours of welding work during their regular assigned working hours in connection with 167 hairline cracks repaired during required maintenance on Carrier's car retarder systems at Bellevue, Ohio.

The claimants listed in Claim No. 1 are employes of the former New York; Chicago and St. Louis Railroad Company (Nickel Plate) located at Bellevue, Ohio.

The claimants mentioned in Claim No. 2 are employes of the original Norfolk and Western Railway Company located at Roanoke, Virginia.

At the time of this claim, the Rules and Working Conditions Agreement of the respective former properties were in effect.

The question to be resolved in this case is whether the Carrier violated the Nickel Plate Agreement when it utilized Maintenance of Way employes to perform "in the field" welding on the car retarder equipment at Bellevue.

The Scope Rule which was in effect at the time was a general rule which referred only to "work generally recognized as signal work". As is usually found in situations of this type, petitioner argued that all work incident to the maintenance of the car retarder system was covered by the Scope Rule. Carrier, on the other hand, argued that Maintenance of Way welders had historically performed the type of "in place" welding as was involved in this case.

Because of the potential Third Party involvement of the Maintenance of Way group, this Board gave due notice to the Brotherhood of Maintenance of Way Employes. The Maintenance of Way Organization advised this Board that:

> "Our organization is not a party in interest with respect to this dispute and, consequently, will make no submission or other representation with respect to it."

Therefore, we are left with a determination which concerns only the Signalmen and the Carrier.

In our view, the claimants mentioned in Claim No. 2 of the Statement of Claim have no proper interest or involvement in this dispute. At the time of the occurrence they had no rights either expressed or implied in the performance of work on the former Nickel Plate territory under the Nickel Plate Rules Agreement. Their claim is, therefore, denied in its entirety.

The situation involving the former Nickel Plate employes, however, is on an entirely different footing. Carrier has acknowledged that Signal Department employes performed "all pre-welding preparations

including cleaning, buffing and burnishing" incident to these repairs. They have, in our view, thereby recognized that the work in question properly accrued to Signalmen. In our judgment it is illogical to reserve all pre-welding preparations for performance by employes under the Agreement and exclude the act of welding from the Agreement. Of course, this determination carries with it a concomitant responsibility on the part of the employes to acquire and retain the complete work skills necessary to perform this reserved work. We will therefore sustain Claim No. 1 insofar as it relates to a violation of the Scope Rule.

As far as the monetary portion of Claim No. 1 is concerned, we are persuaded, under the fact situation as found in this instance, to hold that, inasmuch as the requested payment is for time which was not actually worked, there is no valid basis for allowance of the overtime rate. Therefore, we will sustain Claim No. 1 only to the extent that the 178 pro rata hours consumed by the Maintenance of Way employes will be divided equally among the six (6) claimants named in Claim No. 1 at the respective pro rata rate of the named claimants. See Award No. 19814.

In reaching this conclusion we have discounted the several "new arguments" and items of "first time" widence which were presented to the Board in the respective Submissions and Rebuttals.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the widence, finds and holds:

That the parties waived oral hearing;

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

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

That the Agreement was violated.

A W A R D

Claim No. 1 sustained to the extent indicated in the Opinion.

Claim No. 2 denied in its entirety.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1978.