

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22949

Docket Number SG-22997

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company (former Texas & Pacific Railway Company):

On behalf of Electronic Technician L. D. Walker, Fort Worth, Texas, for an additional payment of 24 hours at his straight time rate account violation of the Scope of the Signalmen's Agreement applicable to the former Texas & Pacific Railway when, on March 15, 16 and 17, 1978, the Electronic Technician at Houston, who is covered by the Missouri Pacific Signalmen's Agreement, repaired equipment removed from the signal system on the territory located on the former T&P."

/Carrier file: K 315-163/

OPINION OF BOARD: Effective October 15, 1976 a corporate merger of the former Texas and Pacific Railroad Company (T&P) and the former Missouri Pacific Railroad Company (MP) was consummated. As a result of the merger the former railroads are now considered a single system, however, the Signalmen's Agreements have not been consolidated into one agreement applicable to the entire system.

Claimant, L. P. Walker, is a Signal Electronic Technician in Fort Worth, Texas. He is covered by the T&P Agreement.

The Organization claims that Carrier violated the Agreement when on March 1, 1978, it removed equipment from the signal system on the former T&P and shipped it to the property of the former MP. At that site an employe covered by the MP Agreement performed the repair. The crux of the Employes argument is that the work belonged to Claimant under the Scope Rule of the T&P Agreement.

It is true, as Carrier argues, that the merger left but a single corporate entity. However, the failure to as of yet consolidate agreements means that from an operational standpoint two distinct contracts still exist. Those agreements remain viable. The rights of employes under each agreement must be enforced even though two carriers no longer exist.

Thus, if Claimant can establish his right to the work under the terms of the T&P Agreement we will sustain the claim. Claimant must prove his exclusive right to perform the work. That is, Claimant bears the burden of proving exclusive jurisdiction over the work to the exclusion of others. See Awards 13083, 13198 and 22761.

An analysis of the record indicates that Claimant has failed to meet the burden of proof. In fact, Claimant's own letter admits that at best he performed 95% of the repairs with the rest being returned to the factory for repairs.

Therefore, given the fact that Claimant did not prove exclusivity and that there is absolutely no showing that the work was transferred off the property, we will dismiss the claim in its entirety.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 15th day of August 1980.