

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24847
Docket Number SG-24837

Robert Silagi, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Railway System

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway System, et al:

(a) Carrier violated Scope Rule 1 of the Signalmen's Agreement when they permitted Project Engineer H. J. DeLoach to place in service two crossing signals on August 3, 1981, one at Lafrance, S. C. M.P. 20.2 and one at Sandy Springs, S. C., M.P. 18.6.

(b) Carrier should now be required to compensate Signal Maintainer R. H. Strickland an amount equal to eight (8) hours at his overtime rate of pay because of this loss of work opportunity on his assignment and because an employee not covered by the Signalmen's Agreement was permitted to perform recognized signal work covered by the Agreement." (General Chairman file: SR-249. Carrier file SG-524)

OPINION OF BOARD: Scope - Rule 1, defines the province of Signalmen to "... include the construction, installation, maintenance and repair of signals, ... generally recognized signal work on interlocking plants, automatic or manual electrically operated highway crossing protective devices and their appurtenances ... as well as all other work generally recognized as signal work."

By supplementary agreements dated January 24, 1975 and May 13, 1977, the parties authorized the Carrier to install highway crossing protective devices by using forces, other than those of the Carrier, provided said forces were represented by the Organization. Pursuant to said agreements the Carrier retained TESCO, Incorporated, whose employees are members of the Organization, to construct the two highway crossing signals mentioned in the claim. On August 3, 1981, Project Engineer DeLoach, an employee of the Carrier but not a member of the Organization, performed certain work in placing the two crossing signals in service.

The question to be decided in this case is whether a supervisory employe outside the scope rule in fact performed work reserved to employes covered by the agreement.

The Organization's position is that the agreements permit contractors to install crossing signals only. Said agreements do not permit Carrier's officers to make tests and adjustments on the signals nor to place the signals in service. Such work belongs to Signalmen. DeLoach, it is asserted, placed the signals into service and, specifically, made tests and adjustments on the signal units, shunted track and changed module boards in the signal units.

The Carrier claims that the crossing signals were installed and placed in service by the contractor. DeLoach performed only his usual responsibilities of overseeing the installation of the crossing signals. The Carrier denies that DeLoach performed any work alleged in the claim.

In a memorandum which DeLoach addressed to his Senior Project Engineer, DeLoach denied that he performed services on the site. The memorandum states, in part:

"All tests are made by the contractor and recorded by the Project Engineer. The Project Engineer may cross check indications, meter readouts, approach times, etc.

My instructions are to place the crossing signals in service utilizing contract forces.

No maintenance functions were performed at the questioned crossings. A module was used from crossing not in service, (contract also). This was done to expedite placing the crossing in service."

The record contains persistent assertions by the Brotherhood that DeLoach performed Signalman's work and just as many denials by the Carrier. The Brotherhood argues that DeLoach's memorandum contains inconsistencies which support its position. Such inconsistencies, if any, are balanced by a paucity of evidence. There is an irreconcilable dispute as to essential facts which this Board cannot resolve since it has only appellate jurisdiction. We have repeatedly held that in a situation where we are unable to make a determination because of the absence of proof we must dismiss the claim (Award 21436 - Lieberman).

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 not violated.

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of June, 1984