

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25062
Docket Number SG-24838

I. M. Lieberman, Referee

PARTIES TO DISPUTE: { (Brotherhood of Railroad Signalmen
(Clinchfield Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Clinchfield Railroad Company:

On behalf of Mr. J. C. Cox, SC&E Assistant, senior cut off SC&E employee, for forty hours at time and one half rate of pay account contractor (Baker Constructions) drilling and blasting holes on railroad property between Mile Post 85.1 and 85.3 for six poles on July 9 and 10, 1981." (Carrier file: 15-1(81-1011) RM1)

OPINION OF BOARD: In this dispute Carrier contracted with an outside contractor for certain work which included drilling and blasting holes for six poles. The work of removing the rock and setting the poles and lines was performed by signal forces employed by Carrier. The record, without rebuttal, indicates that the blasting and drilling operation consumed approximately four and one half hours. The claim filed by Petitioner is in behalf of a furloughed signalman and is for forty hours pay at the overtime rate.

It is this Board's view that the work in question clearly falls within the scope of the signalmen's activities as defined in the Scope Rule of the Agreement. It is equally clear that there was no need to recall Claimant for this relatively short span of activity since there were ample **employees** on the site who could have been used for the drilling and blasting work. Had the Organization named an **employee** on the site for damages for the work performed, the Board may well have taken a different view; however, under the circumstances it is our opinion that Petitioner named the wrong Claimant. For the reasons indicated, therefore, the Claim will be sustained, but no monetary damages are payable.

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 Agreement was violated.

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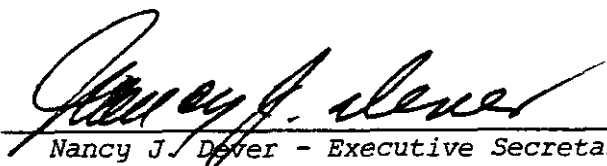
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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of October 1984.



Labor Member's Concurrence

to

Award Number 25062

Docket No. 24838

It seems that we have come full circle with regard to the allowance of a remedy.

Early in the history of this Board, Referees awarded remedies on this basis set out in Award No. 25062. Then, as time passed, Carriers, by constant protest and characterizing such awards as windfalls, persuaded certain Referees to refuse the payment of remedies to any employee who was in simultaneous **compensible** employment. Certain Referees would, however, make such awards to any employee not so employed and petitioners, therefore, began changing their designees for remedies. Now as stated above, we seem to be back where we started and where we should have always been, and the industries employees must be thoroughly confused.

Since the Referees have established the present confusion, they should also proceed to remove it. Under these circumstances, the only feasible way to remove it is to disregard the question of claimant eligibility entirely. As Referees used to say, what should it matter to the Carrier who **is** the beneficiary of an award so long as the Carrier is not excessively jeopardized?



W. W. Altus, Jr.
Labor Member