

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25094
Docket Number X-24182

Herbert Fishgold, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Missouri Pacific Railroad Company (former Texas and Pacific
(Railway Company)

STATEMENT OF CLAIM: "Claims of the General committee of the Brotherhood of
Railroad Signalmen on the Missouri Pacific Railroad Company
(former Texas and Pacific Railway Company):

Claim No. 1

Claim on behalf of Signal Maintainer A. H. Rogoski, Atlanta, Texas for forty-eight (48) at time and one half his straight time hourly rate of \$1943.27 per month. Carrier violated the Scope Rule and Rule 62 of the current Signalmen's Agreement by allowing other than covered employees to install 'Railroad Crossing' signs and track signs on highway crossing signals.

(Carrier file No. K 315-186)

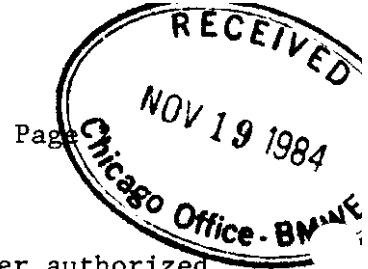
Claim No. 2

Claim on behalf of Signal Maintainer A. H. Rogoski, Big Sandy, Texas for eight (8) hours at time and one half his straight time hourly rate \$1943.27 per month. Carrier violated the Scope Rule and Rule 62 of the current Signalmen's Agreement by allowing other than covered employees to install 'Railroad Crossing' signs and track signs on highway crossing signals.

(Carrier file No. K 315-186)"

OPINION OF BOARD: Claimants are employed in Carrier's Signal Department. During the week of November 18, 1979, employees of the Century Fence Company installed highway signs intended to warn motorists of a railroad crossing and to indicate the number of railroad tracks which the highway crosses at that particular location. The contractor installed such signs at six locations on the signal maintenance district assigned to one of the Claimants. On November 16, 1979, employees of an unidentified contracting firm installed "Railroad Crossing" signs at one location on the signal maintenance district assigned to the other Claimant.

Petitioner claims (without denial by the Carrier) that under the Agreement the work of installing highway crossing protective devices was reserved to the Carrier's Signal **Employees**. The Organization claims that in allowing the employees of Century Fence Company and the unidentified contracting **firm** to perform signal work, the Carrier violated the Agreement.



The record contains no probative evidence that the Carrier authorized or "allowed" the work in question to be performed by the employees of Century Fence or the unidentified contractor; the Carrier denies that it gave any permission or authority for the work. There is even some question as to Carrier's knowledge of the work till after the fact.

This Board has considered a claim in Award Number 19595, wherein Referee Lieberman noted:

"In Award No. 18626 we held:

... if any work was performed on Erie-Lackawanna property or equipment, it was performed without the consent or agreement of Erie-Lackawanna Railroad. Therefore, the burden of proof shifted to the Organization to disprove Carrier's contentions. The record is void of any such proof and it must be concluded that the Organization has failed to sustain its burden. To hold Carrier responsible for Monon's unauthorized act would place Carrier in an indefensible position. See Awards 9847, 10549, 12907, 14888, and 14889 among many others.

We shall reaffirm the position which we have taken in a long line of cases that conduct of third parties which is not authorized by the Carrier cannot serve as a proper basis for claims such as in this case."

There is nothing presented in the consideration of the instant decision which in any meaningful way can serve to distinguish the rationale of the decision in this dispute from that in Award 19595. Accordingly, we conclude that the opinion reached in Award 19595 is hereby confirmed.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1984.