

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26500
Docket Number X-26355

Peter R. Meyers, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Seaboard System Railroad

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard System Railroad Company (formerly Seaboard Coast Line).

On behalf of Signal Maintainer J. E. Williams, headquartered at Raleigh, N.C., account:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope Rule, when it required or permitted Assistant Signal Supervisor M. E. Perry to perform work covered by the Signalmen's Agreement.

(b) Carrier should now compensate Claimant J. E. Williams seven (7) hours at his time and one-half rate of pay. This to be in addition to any other compensation received on December 6, 1983. Carrier File 15-57(84-10)E."

OPINION OF BOARD: On December 6, 1983, Claimant and another Signal Maintainer were assigned to work on a high voltage signal line. An Assistant Supervisor was also present and assisted with the work. Claimant thereafter filed an overtime Claim, citing the work performed by the Assistant Supervisor. Carrier denied the overtime Claim; the Organization subsequently appealed this denial.

The Organization contends that it is well established that an Official who is not covered by the controlling Agreement may not perform work that is covered by that Agreement. The Assistant Supervisor drove a hi-rail vehicle to and at the work site; the vehicle was used solely to reach and repair power Lines. The Organization therefore contends that the vehicle's operation is within the scope of work reserved to employees governed by the Agreement. Moreover, Carrier admitted that the Assistant Supervisor assisted in pulling and replacing power lines, a further violation of the Agreement. The Organization asserts that Carrier's contention that only a small amount of work was involved neither mitigates the violation, nor destroys Claimant's right to file this Claim for monetary loss. The Organization therefore contends that the Claim should be sustained.

Carrier asserts that the Agreement has not been violated. Carrier argues that there is no support for the Organization's Claim that operation of the hi-rail vehicle is work belonging exclusively to Signal Maintainers. There is no mention in the Agreement's Scope Rule of driving trucks or operating vehicles. Moreover, the Organization has not shown a past practice of the disputed work being performed exclusively by Signalmen.

Carrier also argues that the Assistant **Supervisor's** assistance with the splicing, holding a light and holding two pieces of wire together, did not take the place of another maintainer. This assistance could have been provided by a clamp. Carrier asserts that the Assistant Supervisor did not perform signal work in violation of the Agreement; Supervisors commonly lend a hand when requested to do so.

Carrier also argues that if this Board does find that the Assistant Supervisor performed Signalmen's work, it would be, at most, a de minimus violation. Carrier points out that the disputed work took only a few minutes, and any compensation should be at the pro rata rate; the damage Claim for seven hours of overtime pay is excessive.

This Board has *reviewed* the evidence and the record, and we find that the Organization has not met its burden that the Carrier violated the agreement of permitting the Assistant Signal Supervisor to perform the work in question. The Organization has not proven that the Assistant Signal Supervisor transgressed the usual limits of his Supervisory duties, nor has it shown that the Rules give Signalmen the exclusive right to operate the vehicles involved here.

As this Board has stated on numerous occasions in the past, the Organization has the burden of proof in showing that the work was performed in **violation** of the Agreement. Here, the Organization has not met that burden, and the Claim must be denied.

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

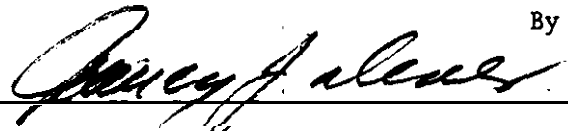
That the Agreement was **not** violated.

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 9th day of September 1987.