

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Soo Line Railroad Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Soo Line Railroad Co.:

On behalf of Signal Maintainer T. J. Bengtson for 9.5 hours pay at his punitive rate of pay account of being denied the opportunity to work on November 10, 1984, account of Carrier violated the Signalmen's Agreement, particularly Rule 21(b), when it failed to call him to repair and maintain signal equipment on his assigned territory. Carrier file: 900-46-B-134."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant is a Signal Maintainer headquartered at North St. Paul, Minnesota. He is assigned the responsibility for the maintenance and testing of the territory from New Brighton to Cardigan. His assigned work hours are 8:00 AM to 5:00 PM, Monday through Friday, with Saturday and Sunday as rest days.

This dispute arose when on November 10, 1984, Carrier assigned signal construction forces to perform adjustment and tests on the CTC System that was placed in service on November 8, 1984. The Organization contends that Claimant should have been called to perform the disputed work on his assigned territory, and relies in support of its position on Rule 21(b) which states in pertinent part that ". . . unless registered absent, regular assignee will be called." In addition, the Organization maintains that Claimant had worked on November 8 and 9 cutting in the new CTC System and, being the senior employee, also should have been called to perform service on November 10, 1984.

Carrier denies that this claim has merit, asserting that even though the CTC System was placed in service on November 8 and 9, 1984 by General Order, some parts of this line were not complete and train orders and fixed signal indications temporarily superseded the General Order. Moreover, Carrier maintains that the final tests and adjustments made on November 10, 1984, were part of the construction of the CTC which is normally performed by construction forces. The fact that Claimant may have assisted signal construction forces on November 8 and 9 does not alter the fact that the work being performed was construction work and not maintenance work. Therefore, Carrier argues, Rule 21(b) was not violated and the claim must be denied.

In determining whether or not to uphold this claim, we note as a starting point in our analysis that there are certain facts here that are not in dispute. For example, there is no dispute that Claimant is the designated Signal Maintainer responsible for the testing, inspection and maintenance of the CTC System between New Brighton and Cardigan. There is also no dispute that on November 8, 1984, Carrier issued a General Notice placing the CTC System in service and that Claimant worked November 8 and 9 during this cut-over. Absent any evidence that parts of the CTC remained incomplete during this period, it appears that Claimant clearly would have been entitled to perform the work in question.

The difficulty with this case, however, is that Carrier's unrefuted evidence suggests that some parts of the CTC were not complete as of November 8, 1984, and that it was necessary to perform some final tests and adjustments up to and including November 10, 1984. On November 8 and 9, the work was performed by construction forces and Claimant assisted. The Organization did not grieve Carrier's assignment of this work to construction forces on those dates. We can only conclude, on the basis of this record, that Carrier was not obligated to assign the Signal Maintainer on November 10 to work which had for two days prior thereto been performed by the Signal Construction Crew. Absent any evidence that the disputed work was somehow different than the final testing and adjustments performed by the Signal Construction crew on November 8 and 9, the Organization has failed to meet its burden of proving the claimed rule violation, and, therefore, we must rule to deny the claim.

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 29th day of September 1988.