

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (SPTC (WL)):

On behalf of:

Signal Foreman; M.T. King
Signalman; S. A. Kusanovich, Signal gang #1 headquartered at Salinas, Ca.
Signal Foreman; C. Pando
Ld. Signalman; D.T. Obedoza
Signalman; J.C. Holmes
Signalman; J.T. Braddock
Signalman; J.R. Rivera, Signal gang #2 headquartered at Santa Clara, Ca.
All these men are from Coast Seniority District. Claiming 24 hrs. at straight time rate, and 11 hrs. at over time rate per each man for January 14, 15, 18, 1988.

This claim is also for:

Signal Foreman; M.T. King
Signalman; S.A. Kusanovich, Signal gang #1
Signal Foreman; J.J. Gonzalez, Signal gang #6 headquartered at Bayshore, Ca.
Signalman; J.T. Braddock
Signalman; J.R. Rivera, Signal gang #2
Signal Maintainer; A.L. Lawrence, headquartered at Gilroy, Ca.
These men are also from Coast Seniority District. Claiming 23 hrs. at over time rate per each man for January 16, 17, 1988.

The Southern Pacific Co. violated rule #37 of the Signalman agreement by using the Niles Signal gang #3 and the Oakland gang #4, both from Western Seniority District to perform signal work on GNO 82504 (A8025) Mile Post E-84.0 at Galroy on the Coast Seniority District."

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.

The Organization contends that Carrier violated the Scheduled Agreement, particularly Rule 37, when Carrier used Western Seniority District employees in the Niles Signal Gang No. 3 and the Oakland Signal Gang No. 4 to perform signal work on GMD 82504 (A8075) at Mile Post E. 84.0 at or near Gilroy, California, on the Coast Seniority District on January 14, 15, 16, 17 and 18, January 1988. Rule 37 Seniority Restrictions reads:

"Seniority rights of employees shall be restricted to the territory over which one Superintendent has jurisdiction, except as may be provided by agreement pursuant to Rule 38."

Rule 38 Change in Seniority Districts reads:

"In case of change in seniority districts the rights of employees affected will be adjusted in the revised districts by agreement between the Management and the General Chairman."

Specifically, the Organization maintains that by using off-division employees, that is, other than Coast Seniority District employees to perform this work and absent the defining circumstances that would warrant the application of Appendix G, and absent evidence that would clearly establish an emergency existed, Carrier violated Article 37. In other words, neither of the Signal Gangs directed to perform this work was assigned to outfit cars and Carrier failed to meet its proof burden when asserting an affirmative defense.

In response, Carrier contends that an emergency existed and accordingly under such circumstances the Carrier has broader authority to deploy forces. It notes that the Santa Clara Signal Gang No. 2 was just completing a two week project, working twelve hours per day, seven days per week, and further notes that the Local Chairmen were notified the two Western Division Gangs would be used. In its March 7, 1988 denial letter, Carrier set forth in detail the nature and dimension of the problem and the specific work tasks that were performed. More pointedly and contrary to the Organization's position that on the afternoon of January 14, 1988, the signal system was back in service, Carrier asserts that the emergency existed until January 18, 1988. The pertinent portions of the March 7, 1988 letter are set forth as follows:

"Your letter, last paragraph, stated that the signal system was back in service on the afternoon of January 14th, and that no emergency existed after that time.

At about 5:00 p.m., January 13, 1988, a flat-bed pickup truck hit the PG&E high voltage tower and removed two of its support legs at about M.P. E-83.7. The 100,000 volt power line (6 wires) fell across the signal pole line and obstructed the westbound main line. By daylight, the morning of January 14th, PG&E had all the AC power turned off. We could now start to make repairs. PG&E moved their tower in the clear.

About 1,200 feet of signal pole line was gone. All the train signals in both directions were at stop. The Signal employees who were present all night had to be rested.

Santa Clara Signal Gang #2 was working in King City on GMD-66714, Short Street, San Ardo, E-182.65. They had been there for two weeks, working 12 hours per day, 7 days per week. On Thursday, January 14th, they were to complete the project, load the trailer by quitting time, so they could return to Santa Clara on Friday, January 15th. Their work shift, while on this project, was 6:00 a.m. to 6:00 p.m.

By the time it was determined what our damages were, it would have been at least 11:00 a.m. before we could contact the Santa Clara Signal Gang; therefore, Signal Supervisor R. McCoy made the decision to use the West Oakland and Niles Signal Gangs and all other signal maintainers, foremen and signalmen that worked close to the problem spot.

Division was directed by the Signal Engineer to use Appendix G Memorandum of Agreement between Southern Pacific Transportation Company and the Employees of the Signal Department, that part reading:

'The seniority of all employees in such gangs is restricted to their home division; therefore, it is mutually agreed that:

1. (a) When a gang is to be transferred from its home division for service on another division (other than in an emergency), the members of the gang to be transferred shall be given at least thirty-six (36) hours advance notice and shall have the election of either accompanying the gang or exercising their seniority under the provision of Rule 43 of the current agreement.'

Both local chairmen were notified of our intentions to use the two Western Division gangs.

After loading the repair material the Niles crew arrived at Carnadero at about 9:00 a.m. and the Oakland crew arrived at about 10:30 a.m., January 14th. All signal cases in both directions were opened and the relays that were burnt were changed, all the lightning arrestors that were damaged were replaced. The pole line had to be cleaned up and dead-ended to the east end. About 12,000 feet of 18-gage copperweld duplex was laid out on the ground and connected to the pole line and the signals were tested. At about 7:30 p.m., the Chief Dispatcher was notified to remove the slow order and that all the signals were operational.

The commercial AC power to our signal cases was off, so two men were assigned to run generators around the clock (24 hours) and to watch that vandals did not pull the temporary pole line duplex wires that were laying on the ground over the rails.

This 12,000 feet of temporary pole line wire, laying on the ground, was then in violation of the Department of Transportation, Federal Railroad Administration Rule 236.74, that reads:

'236.74 Protection of insulated wire; splices in underground wire.'

This rule requires insulated wire be protected from mechanical injury. It prohibits puncturing insulation for test purposes and requires that splices in underground wire have insulation resistance at least that of the wire spliced.'

With PG&E employees and Southern Pacific employees working there, these temporary wires were being walked on; and there was enough slack in the wires that they could have been pulled up over the railroad tracks. With all the above-mentioned, the emergency existed until the underground cable was installed, hooked up and checked out. Upon completion of this work, January 18, 1988, the Niles and Oakland Gangs were released to return to their normal work. The Santa Clara Gang then worked at cleaning up this project through January 21, 1988."


In considering this case, the Board concurs with Carrier's position. The central issue before us is whether an emergency existed on the claimed dates. We have carefully examined the parties' positions with respect to this question and within the context of our decisional law relating to emergencies. See for example, Third Division Awards 16123, 20310, 18032, 25443, 221013, 21477, et al. Accordingly, upon this review which was based upon the facts adduced by the parties, we are convinced that Carrier submitted sufficient credible evidence to establish the bona fides of an emergency. Under such circumstances Carrier has broader authority in assigning employees than under normative conditions. We find no evidence that Carrier abused its discretion when it exercised emergency powers and no evidence overcoming Carrier's affirmative defense. To be sure, the Organization initially established a rule violation, but this position could be overcome or defeated where a factual showing establishes an emergency.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November 1991.