

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Form 1

Award No. 29708
Docket No. SG-29613
93-3-90-3-611

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Railway Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Systems Railroad:

"Claim on behalf of D.W. Kari, Signal Maintainer, headquarters, Gainesville, Georgia, assigned work days Monday thru Friday, rest days Saturday and Sunday, for the following;

- (a) The Signalmen's Agreement was violated, particularly Scope Rule 1, when S & E Supervisor DeVries was permitted to take the place of another employee on August 24, 1989 in working on indication problems in the Signal System at Mile Post 626.4.
- (b) Carrier now (sic) be required to compensate Signal Maintainer D.W. Kari for 2 hours and 40 minutes overtime he was denied when Carrier permitted Supervisor DeVries to take the place of a signal employee covered by the Agreement." Gen'l. Chmn's. File No. SR-3089. Carrier' File No. SG-GNVL-89-16. BRS Case No. 8207-SOU.

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 employe 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.

A claim was filed on October 21, 1989 on grounds that the Signalmen's agreement was violated when a S & E supervisor took indication equipment for "...a signal system from the Signal Maintainer's tool house at Mile Post 584.5 and took the equipment to ...Mile Post 626.4 and worked at this location clearing the trouble in the signal system causing indication problems." In responding to the claim, the Carrier states the following:

"The handling, loading and unloading of material is not covered by the Scope Rule (of the Signalmen's Agreement) and there is ...no violation of the agreement for a supervisor to transport material to be used by signal maintenance personnel."

The parties agree that the amount of time involved, on August 24, 1989 was 2.4 hours. There is no evidence of record that the S & E Supervisor did other than transport the materials in question to the work site.

In responding to the first denial of the claim the General Chairman of the Organization states the following:

"(The) equipment (in question) was in the Maintainer's tool house to be on hand in case of an equipment failure. Part of replacing any piece of equipment failure in the Signal System requires the Maintainer to take the equipment from his tool house, load, haul, unload and install to replace the equipment that has failed. It is part of his normal duties whether it is performed on overtime or during regular working hours. It is signal work recognized by the Agreement and covered by the Scope of the Signalmen's Agreement..."

According to the Carrier, this type of issue has already been resolved in arbitration and it cites precedent to that effect.

The issue before the Board is whether the transporting of signal material on this property is exclusively signalmen work under the operant Agreement. A review of the provisions of the Agreement shows that it does not specifically address this question. Further, there is arbitral precedent which holds that the transporting of material is not covered under the Scope Rule of the Organization's Agreement. For example, in Third Division Award 21294, rendered on this property, which involved a similar dispute between the same parties who are party to this claim, the Board held, citing earlier Award 13347, that:

"No Awards have been found that support the proposition that the movement of material from a warehouse or material yard to a signal construction job, is the exclusive work of Signalmen though such work might be the Signalmen's in a given case...".

In Third Division Award 13708, the Board also found that:

"We find that the transporting of signal material to a job site...is not work exclusively belonging to Signalmen. The Scope Rule of the Signal Agreement does not specifically mention the transporting of signal materials to job sites, as that work reserved to the Signalmen...".

More recently, Third Division Award 28353 between the Signalmen and the Central of Georgia Railroad Company came to a similar conclusion with respect to the proper interpretation of the Scope Rule of the Signalmen's craft. In that Award the Board states that the "...task of transporting signal material is not reserved by the applicable Scope Rule...". Award 10 of Public Law Board 2044 also concluded similarly.

In view of the language of contract, and arbitral precedent Interpreting this language, the Board must conclude the issue before it in this case has already been settled in arbitral forums and it rules accordingly. Since some of the arbitration Awards cited in the foregoing have been rendered on this property, it is also not inappropriate to conclude, as the Carrier does, "hat the instant claim is covered by the principle of res judicata. To this effect, the conclusions arrived at in Third Division Award 6935 properly apply to this case. In that Award it is stated that:

"If, as we maintain, our awards are final and binding, there must be an end sometime to one and the same dispute or we...invite endless controversy instead."

The Organization has also argued that the Supervisor performed work at Mile Post 584.4 to clear the signal problem, however, it submits no evidence to support its argument and, accordingly, it is found to be without merit.

The Agreement has not been violated.

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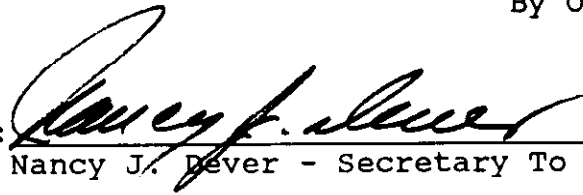
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Secretary To The Board

Dated at Chicago, Illinois, this 16th day of July 1993.


LABOR MEMBER'S DISSENT
TO
AWARD 29708 - DOCKET SG-29613
(Referee Suntrup)

The Majority erred in their decision to deny the Employee's claim, and failed to recognize the merits of this dispute. As denoted in the record, the Organization acknowledged that the Board had previously addressed the issue of transporting or hauling equipment.

The Organization's submission noted that the hauling of the equipment was not the sole issue to be resolved, however. The basis of the Claim was that the supervisor installed and tested the equipment after transporting it to the job site. Notwithstanding, the Organization noted that numerous Board Awards have held that the hauling of equipment for immediate use has been considered a violation of the Agreement.

The Carrier, on the other hand, never addressed the real merits of the dispute and took the singular position that hauling equipment is not covered in the Scope of the Agreement.

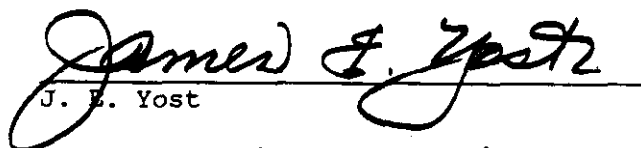
This Award essentially rewards the Carrier for ignoring the facts of the case. Had the Majority reviewed the complete record of this case, a proper decision would have been rendered and there would have been no need for this dissent.



C. A. McGraw, Labor Member


CARRIER MEMBERS' REPLY
TO
LABOR MEMBER'S DISSENT
TO
AWARD 29708, DOCKET SG-29613
(Referee Suntrup)

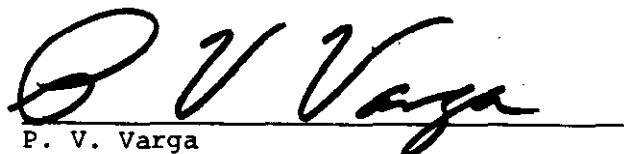
The Labor Member's Dissent asserts that the basis of the claim was that the supervisor installed and tested the equipment after transporting it to the job site. However, we must point out that the Organization did not shoulder its heavy burden of proving that the "supervisor installed and tested equipment" after transporting it to the job site. This fact was clearly pointed out by the Majority in Award 29708, with the finding that "There is no evidence of record that the S & E Supervisor did other than transport the materials in question to the work site." The Labor Member's Dissent bears no resemblance to the facts before the Board upon which its denial decision was based.


J. E. Yost


M. W. Fingerhut


R. L. Hicks


M. C. Lesnik


P. V. Varga