

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Elwyn R. Shaw, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
CHICAGO, BURLINGTON AND QUINCY RAILROAD
COMPANY

STATEMENT OF CLAIM: "(a) That the carrier violated the Signalmen's Agreement by assigning to employees or other persons not covered by such agreement the work of changing and extending the signal line circuits in connection with relocating signals on the McCook Division, between Holdrege and McCook, Nebraska in May, 1939.

"(b) That such employees who were holding seniority rights and capable of performing the work, or entitled to promotion under provisions of the existing agreement, should have been used to perform the work described in paragraph (a) and that such employees be paid all wages lost because of the carrier's violation of the agreement in not using them to perform such work."

EMPLOYES' STATEMENT OF FACTS: "In May, 1939, the distant signals of the automatic block signal system on the McCook Division of this carrier, between Holdrege, Nebraska and McCook, Nebraska, were relocated in such manner as to increase the length of track over which the signals were the controlling factor, in order to provide greater braking distance for the high speed trains.

"In the relocation of the signals, it was necessary to extend and revise the circuits controlling the signals and to make changes in the supports of the wires carrying those circuits. The work of extending these signal line circuits, together with the incidental work in connection therewith, was turned over to the Telegraph Department of the carrier and under date of May 15, 1939 the work was started by Foreman Sullivan, who is a regular assigned foreman in the telegraph department of this carrier.

"The assignment of the work here in question to the employees of the telegraph department was protested to the management in the proper manner under date of May 16, 1939 and the protest was progressed in the proper manner up to the highest officer of the carrier designated to handle such complaints. Each of the carrier representatives to whom this question was referred declined to allow the claim, taking the position that handling signal line circuits is not signal work.

"At the time this signal work was performed by employees of the telegraph department, there were sufficient employees in the signal department to successfully handle the work but they were not so assigned."

POSITION OF EMPLOYES: "The Brotherhood contends that all of the work in connection with relocating the signals on the McCook division, as described in the claim and in our Statement of Facts, was without doubt 'signal work' as clearly covered by the provisions of the existing agreement

tures, was not considered the exclusive work of Signalmen in 1919 and 1920. Nothing has been introduced to indicate that the status of such work was changed, either by schedule rule or practice thereunder, up to January 25, 1938, the date of current schedule agreement with Signalmen. Conclusive of this is the proposal of the Committee that such work be included within the scope of the 1938 agreement, which was declined. The record of practice will not sustain the allegation of the petitioners in this claim and in the absence of schedule provisions in support thereof, it is obviously not valid. Furthermore, as before implied, an award against the carrier would seriously affect the rights of employees subject to the jurisdiction of the International Brotherhood of Electrical Workers who are not a party to these proceedings although vitally concerned therewith.

"It is the Management's position that if the Brotherhood of Railroad Signalmen desire to negotiate an extension of their agreement to include the work involved in the instant claim, it is incumbent upon them under the law, specifically Section 6 of the Railway Labor Act, to serve the usual notice and pursue the customary steps provided for therein. Or, in lieu thereof, the matter undoubtedly could have been disposed of, as contemplated in Section 2, first, of the Railway Labor Act, if the Committee had accepted the Management's proposal to negotiate the point in dispute, including the Brotherhood of Electrical Workers as an interested party in any negotiations that might have taken place. The Management endeavored to secure the concurrence of the Committee to such procedure, which is evidenced by letters written by Mr. A. E. Davis, Staff Officer—Executive Vice President, dated May 24, 1939, September 7, 1939, and December 2, 1939, which are submitted herewith as Exhibits 2-(a), (b) and (c).

"In addition, the employees named in the claim were employees on the dates named in the instant claim and were paid not less than a minimum day of eight hours at their respective rates every day on which signal wires and fixtures were installed by telegraph linemen. It is inconsistent for any person to be heard to say that they should be paid more.

"The Management concludes its submission on the premise that:

- "1. The work in dispute is not exclusively signalmen's work.
- "2. An affirmative award would not be interpretation of a schedule provision, but instead would be the creation of a new rule, which was asked for but not secured through negotiation and would nullify and cause to be worthless, service rights enjoyed by employees of another labor organization, all of which is contrary to the provisions of the Railway Labor Act.
- "3. The matter could and should be disposed of through negotiations as suggested by the Management and the case should be dismissed.
- "4. The employees named in the claim were employed on the dates involved and were paid therefor strictly in accord with schedule provisions relating thereto.

"Therefore, the Management contends that the claim for reparation is not valid for the reasons hereinbefore cited and the jurisdictional dispute is a matter of negotiations and should be so handled."

OPINION OF BOARD: The principles involved in this case are identical with those in Docket SG-1194, Award No. 1501. What is said in Award No. 1501 is controlling in the decision of this case.

FINDINGS: The Third Division of the Adjustment Board after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence finds and holds:

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 claims (a) and (b) are sustained.

AWARD

Claims (a) and (b) are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois this 10th day of July, 1941.