

Award No. 5599
Docket No. SG-5525

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Delaware and Hudson Railroad that:

(a) The Carrier violated the provisions of the current Signalmen's agreement, effective September 1, 1947, when it allocated work that is included in the Scope of this agreement, consisting of the painting of the inside and outside of signal apparatus housings at West Main, Scott, and Walnut Streets, Bainbridge, N. Y., on March 22, 23, 24 and 25, 1948, to employes who hold no seniority rights under the current Signalmen's agreement.

(b) Signal Maintainer, D. H. Silvernail and Assistant Signal Maintainer R. A. Clum be paid five hours each at the punitive rate for each of the following dates, March 22, 23, 24 and 25, 1948, account of employes who hold no seniority rights under the current Signalmen's agreement doing work which should have been assigned to such Signal Department employes.

EMPLOYES' STATEMENT OF FACTS: On March 22, 23, 24 and 25, 1948, employes not covered by the Signalmen's agreement consumed ten hours on each of the above dates painting signal apparatus housings, inside and out, at West Main, Scott, and Walnut Streets, Bainbridge, N. Y.

The signal apparatus housings involved are located on the signal maintenance territory of the claimants, and the work of constructing these signal apparatus housings was performed by the signal forces on the A. & S. Division.

The work of painting signal apparatus has been performed by the employes of the Signal Department for many years and was being done by them when the present agreement became effective. It has been generally recognized as signal work. Painting is a necessary part of the installation of signal and interlocking apparatus.

The claimants were available for the Scope work involved in this dispute. They could have been used outside their regularly assigned hours. The agreement provides a method of payment for time worked outside of regular hours.

A formal request was filed with the Supervisor of Signals and has been progressed in the proper and usual manner up to and including the highest

repair and renewal of signal apparatus; all other work generally recognized as signal work; and all such work as is now being performed by Signal Department employes; also including all work now being performed by Green Island Signal Shop employes, and any other work that may be sent to Green Island Signal Shop by any other department.

It is understood the following classifications shall include all the employes of the Signal Department performing the work described under the heading 'Scope'."

The Carrier denies that the work performed in this case comes within the Scope Rule of the Signalmen's Agreement. The painting of buildings used for housing signal apparatus has always been performed by B. & B. painters.

The identical work which is here claimed by Signalmen was the subject of claim presented to the Third Division, National Railroad Adjustment Board by the Brotherhood of Maintenance of Way Employes in Docket No. MW-4784. Award No. 4845, issued under date of April 28, 1950, sustained claim of Maintenance of Way Employes for this work.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the Committee and made part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This docket involves the question of the coverage of the Scope Rule of the Signalmen's Agreement to the painting of signal apparatus housings. It is argued on behalf of the Carrier that we cannot proceed to a determination of this claim on the merits because no notice has been given to the Brotherhood of Maintenance of Way Employes who have contended for the performance of this identical work. This latter fact is evidenced by the claim in Award No. 4845.

The question of the requirement of notice to other "employes involved" in disputes submitted to this Board under Section 3, First (j) of the Railway Labor Act has long been a source of contention on this Division. Our most recent Award on the subject is Award No. 5432. The latter Award indicates that the Referee therein made an exhaustive study of our previous Awards on the subject as well as the decisions of the Courts with respect thereto. Because of the extreme importance of the question in connection with the functioning of this Board, we have reviewed the matter anew. We find ourselves in agreement with the reasoning expounded at length in Award No. 5432. There is little we can add to the well-reasoned Opinion of the Board in that Award. We do note, however, that, in addition to the First Division Awards referred to therein, said Division issued its Award No. 14903 on November 5, 1951, involving the question of the asserted rights of trainmen to protect temporary grade crossings. There a decision on the merits was refused because the Brotherhood of Maintenance of Way Employes whose rights might have been affected had not been given notice of the proceedings. We conclude, therefore, that on the present state of this record we may not proceed to a determination of this dispute on the merits. The claim will be dismissed without prejudice so that the Employes may take whatever action they may deem advisable with respect thereto hereafter.

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 Employes involved in this dispute are respectively Carrier and Employes 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 claim should be dismissed without prejudice for the reasons set forth in the foregoing "Opinion of Board".

AWARD

Claim dismissed without prejudice in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of January, 1952.

DISSENT TO AWARD NO. 5599, DOCKET NO. SG-5525.

We dissent.

(Sgd.) G. Orndorff
(Sgd.) J. H. Sylvester
(Sgd.) A. J. Cunningham
(Sgd.) A. R. Ferris
(Sgd.) Roger Sarchet