

Award No. 6207
Docket No. SG-5793

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE PENNSYLVANIA RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the Pennsylvania System Committee, Brotherhood of Railroad Signalmen of America, on the Pennsylvania Railroad that:

(a) The Carrier violated the Scope of the current Agreement, when it used Electric Traction Department and Bridge and Building Department employes to install a slide fence on the A. & S. Branch (Commonly termed the Low Grade). This work is part of the Scope of the Agreement and is generally recognized as signal work.

(b) Eight (8) hours pay at the Signaller's rate of \$1.245 be paid to the twelve (12) senior mechanics of the Telegraph and Signal Department of the Philadelphia Division for each day that Electric Traction and Bridge and Building Department employes were used to do the work of installing the slide fence.

(c) Eight (8) hours pay at the Helper's rate of \$1.005 be paid to the five (5) senior helpers of the Telegraph and Signal Department of the Philadelphia Division, for each day that Electric Traction and Bridge and Building Department employes were used to perform the work of installing the slide fence.

(d) Eight hours of allowable time be allowed the senior Foreman for each day that Electric Traction and Bridge and Building employes were used to install the work of the slide fence.

EMPLOYERS' STATEMENT OF FACTS: The Scope work involved in this claim constitutes the construction of a slide protection fence.

An installation of a slide protection fence consists of the construction of a fence along a railroad right-of-way, between the track and the slope or bluff from which rock or dirt slides frequently occur. By utilizing circuit breakers on the fence to control circuits of the automatic block signals, the signals will display their most restrictive indication when a rock, or dirt slide, strikes the fence and forces it out of natural alignment.

Slide protection fences are always installed in conjunction with signals. They may be installed as an adjunct to existing automatic signals or may be used to control signals installed for this specific purpose.

Under the provisions of Article 2, Section 21 of the T. & S. Agreement, a claim for compensation is invalid when not presented within 90 days after receipt of the pay check for the pay period involved. The initial presentation in this case, for an undetermined period, was made on March 15, 1947, and can, in no event, relate back so as to correct the alleged shortage of any pay check received prior to December 16, 1946.

The Carrier contends that the claims are improper and must be denied for, in addition to the reasons already summarized on pages 16 and 17 hereof, they do not comply with Article 2, Section 21 or with the provisions of the Railway Labor Act.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

The Carrier has shown that under the applicable Agreement the employees of the Bridge and Building and Electric Traction Departments performed no service in connection with the erection of the slide protection fence on the Atglen and Susquehanna Branch that accrues exclusively to employees of the T. & S. Department; that the applicable Agreement was not violated; and that the Unnamed Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the employees in this matter.

All data contained herein has been presented to the employees involved or to their duly authorized representatives.

(Exhibits not reproduced).

OPINION OF BOARD: In 1946 the Carrier caused to be erected on its A. & S. Division a 1208 foot slide protection fence. This fence was not the usual type of barrier but was electrically equipped with circuit breakers or controllers so that warning signals were given when the fence was forced out of alignment by sliding or falling stones or earth.

In the erection of the fence the Carrier utilized three groups of its employees. Bridge and Building employees did the excavating, raised and attached the fence panels to hanger cables and adjusted the fence to proper tension. Electric Traction employees assembled and installed the catenary system. Employees of the Telegraph and Signal Department installed the cable connections, terminal boxes, controllers and signal circuits. Detailed statements of the work performed by these groups are set out in the submissions.

Some five months after the work was undertaken the Organization demanded that the Carrier compensate the T. & S. employes for the work performed by the B. & B. and E. T. employes in the erection and installation of this slide fence. The demand was refused.

The Scope Rule of the effective Agreement does not in terms enumerate the erection or installation of slide fences as belonging to T. & S. employes but the Organization says work of that character is brought under the Agreement by the following clause found in the Scope Rule: "* * * and all other work in connection with installation and maintenance thereof that has been generally recognized as telegraph, telephone or signal work."

Under the terms of the Scope Rule the burden is on the Organization to establish that that part of the installation performed by B. & B. and E. T. employes in the instant case, has been generally recognized as telegraph, telephone or signal work. This burden, in our judgment, the Organization has failed to satisfactorily discharge. In its original ex parte submission the Carrier asserted:

"So far as concerns the practice which has been followed with respect to the construction and maintenance of slide protection fence on this Railroad, T. & S. Department employes have not been used exclusively to install such a facility. In the Carrier's Eastern Region, where the fence in question was constructed, there are several such facilities in operation. The exclusive practice with regard to the construction and maintenance of these fences has been and is for Bridge and Building Department employes to install and maintain the fence, intermediate supports and messengers for the fence. In electrified territory, such as the Atglen and Susquehanna Branch, where a fence is connected to the catenary structures, Electric Traction Department employes are used to install the messenger that supports the fence and make the necessary connections from the fence to the catenary structures, to install the intermediate wood pole supports for the fence for the B. & B. Department employes to erect and attach the fence to the wood poles and catenary poles, in addition to providing the necessary protection to the B. & B. Department employes while they are working in close proximity to the electrical circuits. After installation of the fences they were and are maintained by B. & B. Department employes, with the assistance of Electric Traction Department employes when necessary. T. & S. Department employes installed and maintained the circuit controllers that are actuated by the fence, including all of the wire and cable for the electrical circuits that operate in conjunction with the signal system."

The Organization has not successfully met the above statement of fact.

Having reached the conclusion that the claim must be denied for the reason stated, it is unnecessary to take notice of the other propositions urged by the Carrier.

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 evidence does not establish a violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Signed) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 15th day of May, 1953.