

Award No. 8068
Docket No. SG-8020

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Marion Beatty Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Seaboard Air Line Railroad that:

Assistant Signalman J. Green, C. M. Benoy, and W. A. Newsom of the Hamlet Signal Shop, Hamlet, N. C., be paid the difference between their respective rates as Assistant Signalmen and that of Signalmen for all time worked between December 4, 1953, and February 4, 1954, and thereafter so long as they are permitted or required to perform recognized Signalmen's work without working with and under the direction of a Signalman. (Carrier's file Sig. 25)

EMPLOYEES' STATEMENT OF FACTS: The claimants in this case are regularly assigned as Assistant Signalmen in the Hamlet Signal Shop normally working eight hours per day, five days a week. The normal working force in this shop consists of one Foreman, one Leading Signalman, one Signalman, three Assistant Signalmen, and two Helpers. All except the Helpers are assigned to specific stations (work benches) in the shop.

The principal work performed in this shop consists of mechanic's work in connection with the repairs, tests, and inspections of signal apparatus sent in from field points. The work primarily performed by the claimants consists of mechanic's work on relays, such as repairs, testing and inspecting. Repairs includes adjusting and calibrating of movable parts in the relays.

The character of the mechanic's work performed by the claimants was changed following the presentation of this claim to the extent that the claimants would no longer be required to "slide" test relays. Expressed in other words, the claimants were to be no longer required to make final check tests and affixed their signatures on relays which they repaired. The final tests were then required of the Signalmen in the shop, who affixed their signatures to the relays, thereby certifying that the signal apparatus meets prescribed specifications and standards. (See Brotherhood's Exhibit No. 5)

Prior to the introduction of this claim the claimants were required to "slide" relays and affix their signatures thereto.

The remaining mechanics' work required of the claimants consisted of repairing of relays, which includes the assembling, adjusting, calibrating, and

Mr. Pitts wrote Local Chairman Green on February 15, 1954, declining the claim.

General Chairman Melton appealed the claim to Mr. DePriest, Superintendent Communications and Signals, on April 20, 1954, which appeal was more than thirty (30) days after date of Mr. Pitts' decision.

The Director of Personnel declined to recognize the claim, when it was appealed to him, because the time limit provisions of Rules 51 and 48 were not complied with.

POSITION OF CARRIER: Rule 51(b) establishes the right of appeal in handling claims and grievances in regular order of succession up to and including the Director of Personnel, who is the highest official designated by the railroad to whom appeals may be made **provided time limits for making appeals, as covered by Rule 48, are complied with.** Rule 48(c) provides that appeals **must** be filed in writing with the next higher officer within thirty (30) days after date of his decision.

It is the Carrier's position that since Mr. Pitts' decision was not appealed within thirty days from date thereof, the claim should be dismissed as being outside the jurisdiction of the Third Division. The National Railroad Adjustment Board has ruled that the failure of employe or his representative to comply with the time limits specified in the Agreement precludes the Board from passing upon the merits of the claim; that the failure to meet the procedural requirements of time limit rules is a fatal defect.

See Second Division Awards 1136, 1404, 1445, 1471; Third Division Awards 2222, 2574, 3605, 4554, 6010, 6396, 6804, 6864, 7000; Fourth Division Awards 573, 778, 840; First Division Awards 11425, 13991, 14405, 15364, 16108, 16836.

Carrier affirmatively states that all data contained herein has been made known to Brotherhood representative.

(Exhibits not reproduced.)

OPINION OF BOARD: There are two claims involved in this case or one claim in two parts. For convenience the two parts will be referred to as Claim No. 1 and Claim No. 2. They were processed on the property separately, one following the other, but when filed with this Board they were treated by the claimants as one.

The Carrier insists that Claim No. 1 was not handled timely on the property, that one appeal step on the property was not taken within the time called for by the working agreement, and that Claim No. 2 has never been filed properly with this Board and that therefore both of them are out. We are agreeing herein with the first but not the second contention. We are considering Claim No. 2 on its merits and denying it on its merits.

November 11, 1955 the Brotherhood served notice of intention to file a claim for three Assistant Signalmen for difference between their respective rates as Assistant Signalman and that of Signalman for all time worked between December 4, 1953 and February 4, 1954, and thereafter so long as they were permitted or required to perform recognized Signalman's work without working with or under the direction of a Signalman. It will be noted that this claim is a continuing one, not limited to the dates mentioned above and could presumably go on to the date of this award if the alleged violation continued that long.

The Brotherhood on December 12, 1955, filed its claim with this Board. Claim No. 1 was set out clearly but Claim No. 2 was not so clear. Claim No. 2 is a claim by the same Assistant Signalman, under the same circumstances, for the same work but from a later date, October 6, 1954, picking up at a

point 10 months after the original claim, and going to date of this award. We are of the opinion that Claim No. 2 is embraced within the notice and submission to this Board and properly before this Board.

The reason for Claim No. 2 and the confusion herein, is that the carrier denied the original claim saying that it was outlawed because it was not appealed to Signal Superintendent, J. R. DePriest, within the time prescribed by Rules 48 and 51 of the working agreement and the Brotherhood, without relinquishing its original claim, thought that it had better renew its claim beginning October 6, 1954 and process it on the property without any such delays.

This was a precautionary measure taken by the Brotherhood and a necessary one inasmuch as we find that Claim No. 1, original claim dating back to December 4, 1953, was not processed timely on the property, it was more than a month late at one step, and no action of the carrier had the effect of forgiving the delay or waiving it.

The mere fact that the Brotherhood continues to argue a point after a claim is denied or that the carrier does not mention the delay in the appeal as a defense in every step of the procedure on the property does not necessarily excuse the delay.

Claim No. 2, on its merits, boils down to this question, "Have the three claimants, the three assistant signalmen, been working alone and making the necessary repairs, tests and inspections of relays and other signal apparatus without the assistance and direction of signalmen, so much so that they are actually doing the work of signalmen and are responsible as signalmen?" Stated in another way, "Have they or have they not been 'working with and under the direction of signalmen' as those words are intended in Rule 6 of the agreement, and are they therefore entitled to Signalmen's pay?"

We find that since approximately June 12, 1954, Signalmen have had the responsibility for seeing to it that repairs made by assistant signalmen were properly done and if not properly done signalmen returned the work to the assistant signalmen for correction, that Signalman, although not at the same benches, work in the same vicinity as assistant signalmen, close enough to check their work, that Signalmen write down the values at which all relays operate, sign their names and take the responsibility for the finished job.

Under these circumstances we cannot say that Assistant Signalmen do not work with and under the direction of Signalmen as the words are intended in the agreement or that there is any violation of the agreement.

We are confronted with another part of Rule 6 which contemplates that an Assistant Signalman will not move up to Signalman until a vacancy or new position is open. The file contains no evidence on whether there is a vacancy or whether a new position is open. Presumably there is not or it would have been discussed.

The two letters cited by the organization at page 5 of its submission and its Exhibits 5, 6 and 16 have been disregarded because it appears that they were first presented to this Board without having been presented to the Carrier, or known to the Carrier, while this case was being handled on the property, this being not in accord with our rule of procedure outlined in Board Circular No. 1.

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 the first part of the claim asking for relief from December 4, 1953, to February 5, 1954, and thereafter so long as the alleged violation continued was not processed on the property within the times specified by the agreement, was out of time and is not properly before this Board.

That in regard to the second part of the claim asking for relief from October 6, 1954, and so long thereafter as the alleged violation continued, we find no violation.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary.

Dated at Chicago, Illinois, this 25th day of September, 1957.