

Award No. 9498

Docket No. SG-9118

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Referee F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Florida East Coast Railway Company in behalf of:

Signal Maintainer G. M. Hodge for the Foreman's rate of pay while acting as Foreman in 1955 on September 13, eight hours; September 14, eight hours; September 15, five hours; September 16, six hours; under Rule 1 (a) of the Communications-Signalmen's Agreement.

EMPLOYEES' STATEMENT OF FACTS: Signal Maintainer J. C. Reithmaier is a regularly assigned Maintainer at Little River, Florida, Signal Maintainer G. M. Hodge is a regularly assigned Maintainer at Miami, Florida, and Signal Maintainer W. R. Buckner is a regularly assigned Maintainer at Hollywood, Florida. Signal Maintainers Reithmaier and Buckner have Signal Helpers assigned to work with them. Signal Maintainer Hodge does not.

Under date of September 12, 1955, the above Signal Maintainers received a joint letter from Superintendent, Communications and Signals, C. B. Cargile, as follows:

"On account of work in connection with widening the Royal Glades Canal, Bridge 354.51, located approximately 8,000 feet south of Ojus, it will be necessary to remove three spans of communication wires on the Western Union line and place the circuits in temporary twist pair wire to be hung on secondary cross-arm of the signal line located west of the main line tracks.

I am advised that Mr. Bloomer of the Western Union is arranging to make this temporary arrangement of the Western Union circuits Tuesday, September 13th, and confirming telephone instructions you will co-operate with his forces at that time and handle the temporary installation of twist pair wire in the railway communication circuits. I understand Maintainer Hodge has a supply of secondhand twist pair wire which can be used on this work. I am ordering an additional 5,000 feet on 1250 No. 15464 in case he does not have sufficient.

not rely upon the others for instructions or advice. As said before, the situation was simply one involving cooperation between the three maintainers and the work connected therewith, which incidentally occurred on Maintainer Buckner's section and not the claimant's, was compensable at no more than maintainer's rate. Maintainer Hodge was not held responsible for the work performance of the other maintainers, and did not keep their time or render reports as a foreman is required to do. Maintainer Reithmaier understood from the joint instructions, and so recorded in his daily work reports (Item No. 2, Carrier's Statement of Facts), that he was "assisting Buckner". The claimant's instructions were precisely the same and he did nothing more.

For the reasons stated, the claim is without merit and should be denied.

The Florida East Coast Railway Company reserves the right to answer any further or other matters advanced by the Brotherhood of Railroad Signalmen of America, in connection with all issues in this case, whether oral or written, if and when it is furnished with the petition filed ex parte by the Brotherhood in this case, which it has not seen. All of the matters cited and relied upon by the Carrier insofar as they relate to the case as handled on appeal on the property have been discussed with the Employees.

OPINION OF BOARD: Claim is made here by the Organization, to require the Carrier to compensate Claimant at the Foreman's rate of pay for specified hours allegedly worked, and performed Foreman's duties.

The facts of record show that Carrier, about September 13, 1955, was engaged in removing temporary three spans of communication wires from a pole line of the Western Union and its own circuits, to be transferred to conduits under the rails to Carrier's regional line west of the tracks at Mile Post 354.51.

Carrier required three of its Signal Maintainers to jointly assist in this operation. Claimant here named was one of the Maintainers required to work on this operation as per letter of instructions from Carrier Superintendent of September 12, 1955.

Contention is made by the Organization that the Claimant, named here, was the senior employe assigned to the work involved and that he received instructions on the handling of materials to be used, and therefore was in charge of the project, and should be paid at the Foreman's rate of pay.

Carrier contends that instructions in the Superintendent's letter of September 12, 1955, contained the same instructions, jointly, to two other Maintainers and in no way designated the Claimant here, as the employe to be in charge of the work, nor did such letter give the Claimant any authority or supervision over the other Maintainers.

The record does not disclose any evidence to the Board, that the Claimant herein, received any instructions from Carrier putting him in the position of Foreman or supervisor on this project. Nor was he given any supervision or authority to give instructions or orders to the other Maintainers on how to perform their work here. No inference can be drawn from the record here that Claimant had any such alleged authority over the two other Maintainers assigned jointly to this work by Carrier.

We are unable to find any rules in the effective Agreement between the parties, that support in any way the allegations of the claim. The claim should be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of July 1960.