

Award No. 9614
Docket No. SG-9033

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chicago, Rock Island and Pacific Railroad Company that:

(a) The Carrier violated the Signalmen's Agreement on September 12, 13 and 16, 1955, when it failed to utilize the services of Signal Maintainer W. L. Stickley in connection with a rail relay job at the Minco, Oklahoma, signal maintenance territory.

(b) Signal Maintainer W. L. Stickley be paid one and one-half hours at the time and one-half rate on September 12, 13 and 16, 1955. (Carrier's file L-130-49.)

EMPLOYES' STATEMENT OF FACTS: The Minco, Oklahoma signal maintenance territory is regularly assigned to Signal Maintainer W. O. Davis, who was on vacation at the time the violations occurred.

Claimant W. L. Stickley was instructed as follows by telegram:

"WIRE

El Reno, Sept. 11, 1955

W.L.S.—El Reno

Handle bonding acct. condemned heat rail MP 410 immediately after 8 AM Monday Sept. 12th—A—112.

/s/ E. L. B.
12:15 PM"

"E. L. B." are the initials of Signal and Communications Supervisor, E. L. Bartholomew, who is the claimant's immediate superior officer.

Mr. Stickley performed this work because in so doing, track forces could then proceed to perform their work more rapidly. This was work which they could perform and Mr. Stickley could not perform, namely, relaying steel rail.

In connection with this claim, your Board's attention is directed to past practice on this property in connection with rail changing. Past practice has been for trackmen to roll out the rail without purposely or intentionally breaking the bonds.

In this case, there is no record of "track bonding" of rail as contemplated by the scope rule of the agreement.

In this case, as in all others which involve the question of penalty rate of pay for work not performed, we wish to direct your Board's attention to your consistent policy which has been enunciated in several of your Awards, namely, that the penalty for time worked differs from that not worked. Therefore, if the claim had merit which we deny, the claimant would be entitled only to pro-rata pay.

Because there was no violation of the agreement in this case, the Carrier has declined this claim and respectfully requests your Board to support our declination.

It is hereby affirmed that all of the foregoing is, in substance, known to the Employees' representatives.

OPINION OF BOARD: The issues raised by this claim were litigated by these parties in Docket No. SG-8083 which resulted in the sustaining in Award 8069. After careful consideration, we are not persuaded that our prior Award is "palpably wrong." It is applicable here. See also Award 6584. On the facts presented, and, as in the Awards cited, the claim for the overtime rate must also be sustained.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1960.