

Award No. 10613

Docket No. SG-10001

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
SOUTHERN RAILWAY COMPANY ET AL.**

STATEMENT OF CLAIM: Claim of the Brotherhood of Railroad Signalmen of America on the Southern Railway Company et al. that:

(a) The Carrier violated and continues to violate the current Signalmen's Agreement when, some time prior to the middle of 1955, the Carrier removed, transferred, or otherwise arranged for certain recognized signal work on the Eastern and Western Lines seniority districts to be performed by employees of the Carrier's Stores Department; namely, the ordering, receiving, handling, storing, shipping, and distribution of signal material and equipment, by employees in the Stores Department who hold no seniority or other rights under the Signalmen's Agreement.

(b) Signal Foreman R. P. Powell; Signalmen C. R. McClure, R. L. Alread, F. D. Williams, W. B. Smith, J. A. Watts; Assistant Signalman L. F. McGinnis; and Signal Helper J. L. Stevenson, who may be adversely affected be compensated at their respective overtime rates of pay on the basis of eight hours per day for all signal work performed by those not covered by the Signalmen's Agreement, on assigned work days and/or days of employment, to begin sixty days prior to September 1, 1956, and continue until a correction is made and the violation discontinued with respect to the employees of the Stores Department performing "recognized signal work".

(c) The Carrier be instructed and required to restore to the signal employees on the Eastern Lines seniority district, and on the Western Lines Seniority district, that certain recognized signal work which has been, is now, or may be, removed, transferred, and/or performed by the employees of the Carrier's Stores Department, and assign such signal work to the employees covered by the Signalmen's Agreement in the respective seniority districts.

(d) The Carrier be instructed and required to jointly check its records with the Brotherhood (General Chairman or other officer of the organization) to determine the signal employees adversely affected,

those performing signal work not entitled thereto, and the proper payments due, subject to a sustaining award or other decisions of the Board. (Carrier's File: SG-10071)

EMPLOYEE'S STATEMENT OF CLAIM: Claim of the Brotherhood of Railroad Signalmen of America on the Southern Railway Company et al. that:

(a) The Carrier violated and continues to violate the current Signalmen's Agreement when, some time prior to the middle of 1955, the Carrier removed, transferred, or otherwise arranged for certain recognized signal work on the Eastern and Western Lines seniority districts to be performed by employees of the Carrier's Stores Department; namely, the ordering, receiving, handling, storing, shipping, and distribution of signal material and equipment, by employees in the Stores Department who hold no seniority or other rights under the Signalmen's Agreement.

(b) Signal Foreman R. P. Powell; Signalmen C. R. McClure, R. L. Alread, F. D. Williams, W. B. Smith, J. A. Watts; Assistant Signalman L. F. McGinnis; and Signal Helper J. L. Stevenson, who may be adversely affected be compensated at their respective overtime rates of pay on the basis of eight hours per day for all signal work performed by those not covered by the Signalmen's Agreement, on assigned work days and/or days of employment, to begin sixty days prior to September 1, 1956, and continue until a correction is made and the violation discontinued with respect to the employees of the Stores Department performing "recognized signal work".

(c) The Carrier be instructed and required to restore to the signal employees on the Eastern Line seniority district, and on the Western Lines seniority district, that certain recognized signal work which has been, is now, or may be, removed, transferred, and/or performed by the employees of the Carrier's Stores Department, and assign such signal work to the employees covered by the Signalmen's Agreement in the respective seniority districts.

(d) The Carrier be instructed and required to jointly check its records with the Brotherhood (General Chairman or other officer of the organization) to determine the signal employees adversely affected, those performing signal work not entitled thereto, and the proper payments due, subject to a sustaining award or other decisions of the Board. (Carrier's File: SG-10071)

EMPLOYEES' STATEMENT OF FACTS: The Carrier has maintained on this property since the inception of the Signal Department a number of signal storehouses that were used for the purpose of storing signal equipment and material for subsequent use by Signal Maintainers and Signal Gangs in the field.

Each Signal Maintainer and Foreman of the gangs carried a stock book in which all signal material on hand was entered for record. As signal material was needed and used in the field, it was charged out and a special requisition was made by the Signal Department for replacement of the signal material used. At all times the signal material that was ordered, handled, and stored in these various warehouses was handled exclusively by Signal Department employees.

(b) The giving of notice by the Third Division of the Adjustment Board to the involved employees of the clerical class or craft is not only required by Section 3 First (j) of the Railway Labor Act, but is a jurisdictional prerequisite to the exercise of the statutory power conferred upon the Board by law; therefore, it is obligated by law to give such notice to employees of the clerical class or craft before passing on the merits of the claim here involved if, despite the facts here presented, the Board assumes jurisdiction.

(c) The effective Signalmen's Agreement has not been violated, but, to the contrary, has been complied with to the letter.

Claim, being barred, should be dismissed by the Board for want of jurisdiction, but if not dismissed should be denied, as the point at issue has heretofore been conceded by the Brotherhood and the agreement in evidence has been complied with to the letter.

All evidence submitted in support of Carriers' position is known to employee representatives.

Carriers, not having seen the Brotherhood's submission, reserve the right to present such additional evidence and argument as may be necessary or desirable.

(Exhibits not reproduced.)

OPINION OF BOARD: We believe the procedural questions have no merit in the instant case.

We have examined the Scope Rule in question and the many past awards cited by both parties herein, and we find no authority based upon the facts and the relevant Scope Rule to support the Claimants.

An examination of Scope Rule 1 does not reserve the work in question exclusively to the Organization. We cannot find in this rule the authority for "ordering, receiving, handling, storing, shipping and distribution of signal materials and equipment," as expressed in the Organization's claim. The last phrase of Rule 1, "as well as all other work generally recognized as signal work," cannot be accepted as authority for the Organization's claim. Clerks have performed this work for the Carrier, and that work has never been performed exclusively by the signalmen.

Section 2 of the Scope Rule Sections (a) through (f) lends no support to the Organization's position, except a recognition that incidental to their work they handle supplies and materials. There was no violation of the Agreement.

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 this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of May 1962.