

Award No. 10984

Docket No. SG-10356

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
CLINCHFIELD RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Clinchfield Railroad that:

(a) The Carrier violated the current Signalmen's Agreement on March 18, 19, and 20, 1957, when it required SC&E Maintainer J. L. Sifford to suspend his regularly assigned maintenance work and perform SC&E Man (Gang) work with this Carrier's Signal Gang under Signal Foreman Stewart Adkins instead of using an SC&E Man to perform the work while dismantling and taking down wires and poles and installing cable at Allen, Virginia.

(b) The Carrier now allow the senior SC&E Man in Gang No. 10 eight hours at the pro rata rate of pay for March 18, 19, and 20, 1957, dates on which SC&E Maintainer J. L. Sifford was used to perform SC&E Man (Gang) work. [Carrier's File No.: Signalmen.]

EMPLOYEES' STATEMENT OF FACTS: Under date of March 15, 1956, the Carrier issued Bulletin No. 802, advertising for bids a position of SC&E Maintainer with assigned headquarters at Erwin, Tennessee. Mr. J. L. Sifford, being the senior bidder for the position, was awarded and assigned the position on March 26, 1956, under Bulletin No. 807.

Among other things, Bulletin No. 802 specified that the position being advertised for bids was a new position with an assigned work week of Monday through Friday, assigned work hours of 7:15 A. M. to 4:00 P. M., and the brief description of duties showed the position to be a maintenance position consisting of repairing and testing signal and communication apparatus, and other maintenance duties covered under the scope of the current Signalmen's Agreement.

Due to construction work that was planned and being performed by the Carrier's Maintenance of Way Department at Allen, Virginia, it was

handle their claim in the manner prescribed by Article V of the May 20, 1955 Agreement. For that reason the claim should be denied.

Aside therefrom, the claim as presented to the Board finds no support in any rule of the working agreement of July 1, 1950. Similar work has been performed by both SC&E Maintainers and SC&E Men in this same manner throughout the life of the current agreement, which is the first and only agreement with the Employees, and without protest.

With respect to part (a) of the claim presented to this Board, SC&E Maintainer Sifferd was not required to suspend his regularly assigned work. The work he performed was and is a part of his regularly assigned work, all of which is within the Scope Rule of the agreement and within his seniority class. No rule of the agreement was violated when the Carrier required him to do that work which he had demanded the right to do, contracted to perform, and for which he was paid. Part (a) of the claim is, therefore, without merit.

With respect to part (b) of the claim, the senior man in Gang 10 was R. W. Hatcher. He performed service on the project on the dates involved. The work was covered by the Scope Rule of the agreement. For his service he was paid. We find no merit in the claim.

This claim appears to be an effort by the Employees to set up craft lines within the craft and by a ruling of this Board to write a new rule—a rule nowhere to be found in the agreement.

For the reasons outlined, Carrier submits the claim of the Employees, and each part of it, is entirely without merit, and we respectfully request the Board to so find and deny the claim in its entirety.

All matters contained herein have heretofore been presented to the Employees and have been made a part of negotiations on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier here excepts to the claim as made here, first that the claim is not properly before this Division, for the reason that no Employee is named specifically as provided by Article V, of the Agreement of May 20, 1955, effective January 1, 1955. Carrier further contends that the Petitioners having failed to submit proof to support the claim, that such claim should be denied.

While the record here does not show a specific named Employee, as a proper Claimant, there is evidence that one R. W. Hatcher, would be the proper Claimant. There appears in the Statement of Claim (b) that the senior SC&E Man in Gang No. 10, as alleged, is the Employee involved here. In the case here before us, while the Claimant Employee is not identified, there is sufficient evidence before us for Carrier to identify

such Employee, by a reference to Claim (b) where claims are alleged to be on behalf of the senior SC&E Man, in Gang No. 10. A dismissal of the claim is not required here, and the claim will be determined on the merits as disclosed by the record.

The Organization, in support of its position, includes in its submission certain highly improper evidence, in reference to a letter from its Vice President to the Employees covered by the effective Agreement. Such evidence was not offered when the matter was discussed on the property with Carrier. Such evidence is self serving and will receive no consideration here. The Organization makes claim on behalf of the senior SC&E Man, who from a review of the record before us, was in service at the time the claim was made. Such Employee was R. W. Hatcher. Such Employee was performing service with the Employees engaged in the work required by Carrier.

There is nothing in the record to support the claim as first made to Carrier which was premised on the assertion that the Company improperly allowed the Signal Maintainer to perform work which was not recognized as maintenance work. However when the claim progressed to this Division, it was contended that Carrier required its SC&E Maintainer to suspend his work as maintainer and to perform service as an SC&E Man. Rules 5 and 6, of the Agreement, prescribe the duties of both an SC&E Maintainer, and an SC&E Man. The Board finds there is no merit to claim here, the essence of the claim as made on the property is not the claim which is progressed here. Even if the claim was properly before us, Rule 49, of the Agreement, precludes any payment to the SC&E Man, since the pay scale for the SC&E Maintainer and the SC&E Man, is the same, and nothing would be due from Carrier, since they both performed work at the same time, on the same job, as provided by Rules 5 and 6, of the Agreement.

The claim is not supported by the record here, and should be denied in its entirety.

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 Carrier did not violate the Agreement. The Organization failed to present proof to support a sustaining award, as alleged, on the property.

AWARD

Claim denied in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1962.