

Award No. 11038

Docket No. SG-10548

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, 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 Company that:

(a) The Carrier violated the agreement when on Tuesday, May 7, Wednesday, May 8, and Thursday, May 9, 1957, they allowed work at Spartanburg, South Carolina, to be diverted and/or transferred to persons not covered by the Scope of the agreement.

(b) Each employe assigned to Signal Gang No. 10 be allowed eight (8) hours per day at his respective pro rata rate of pay for each date listed in part (a) of this claim, which represents the time consumed by persons not covered by the agreement in performing the Scope work covered by the agreement.

EMPLOYEES' STATEMENT OF FACTS: On May 7, 8, and 9, 1957, the Carrier assigned SC&E work covered by the SC&E Agreement to employes not covered by and who held no seniority or rights to any of the work covered by the SC&E Agreement. On the dates SC&E work was assigned to and performed by employes other than SC&E Department employes, the Carrier had an SC&E Gang under SC&E Foreman G. W. Wilson consisting of 16 SC&E employes who could have performed the SC&E work, as follows:

P. E. Booher, Jr.,	Leading	SC&E	Man
R. Whitson,	"	"	"
J. I. Bradshaw,	SC&E	Man	
R. W. Hatcher,	"	"	
R. Whitson,	"	"	
J. Adkins,	"	"	
J. C. Edwards,	Assistant	SC&E	Man
T. Buchanan,	"	"	"
S. Whitson,	"	"	"
J. C. Christy, Jr.,	SC&E	Helper	
H. C. Fletcher,	"	"	
W. L. Rogan,	"	"	

All data contained herein have been submitted to the duly authorized representatives of the Employees and have been made a part of negotiations on the property.

OPINION OF BOARD: The Carrier entered into a contract with the South Carolina State Highway Department in connection with the construction of a highway underpass. In the course of such construction the Highway Department contracted with an independent electrical contractor for the relocation of a portion of the Carrier's signal pole line. This work was performed on May 7, 8 and 9, 1957. It consisted of transporting poles, digging nine holes and anchor holes and setting nine poles, a maximum of 79¼ man hours was consumed. On July 2, 1957, the General Committee of the Brotherhood of Railroad Signalmen of America filed with the Signal Engineer a claim on behalf of each employe assigned to SC&E Gang #10 for 8 hours at appropriate rates for each day the independent contractor worked on relocating the pole line of the Carrier. On July 5, 1957, the Signal Engineer wrote the General Chairman refusing to consider the claim because it had not specified by name the employes for whom the claim was made nor the amount claimed for each. On August 12, 1957, the General Chairman again wrote the Signal Engineer calling his attention to part (b) and the 4th paragraph of the claim. On August 14, 1957, the Signal Engineer again declined to consider the claim because it did not conform to the Agreement of May 20, 1955. On August 29, 1957, the General Chairman appealed to the General Manager, who, on October 14, 1957, disallowed the claim because it was on behalf of unnamed Claimants and not in accordance with Article V of the Agreement of May 20, 1955. The General Manager also advised the General Chairman that if he would present the claim as required by the rules he would consider it on its merits. Thereafter on October 26, 1957, a conference was held between the General Manager and the General Chairman when the matter of submitting the claim on behalf of named Claimants was discussed. The Carrier asserts and it is not denied that they agreed that if the Organization would submit the names and that when the claim was properly filed, it would consider and confer on the merits. Subsequently, and without further conference or amendment to the claim, the dispute was brought here.

The work described in the claim and confirmed by Carrier was work clearly falling within the limits of the scope rule of the current agreement. However, throughout the handling of this dispute the Carrier took the position that the claim on behalf of "The men in SC&E Gang #10" did not name the Claimants or state the time claimed, and that it was therefore invalid. On the other hand, the Organization has contended that the claim as stated satisfies the rule because it does not require the naming of Claimants, if they are identifiable.

The pertinent part of Article V of the May 20, 1955, agreement reads:

"1. All claims or grievances arising on or after January 1, 1955, shall be handled as follows:

(a) All claims or grievances must be presented in writing by or on behalf of the employe involved. . . ."

It is clear that the rule (Article V) does not specifically require that the employe involved must be named. Certain prior awards have found claims valid where the Claimant is not named but his identity is readily ascertainable. In Award 9205 (Stone) the claim was for "the senior idle

Telegrapher, extra in preference, on The Champlain Division seniority roster". In that award the Opinion stated "while not named, he (Claimant) was so described that he could readily be identified by the Carrier from its roster **without further evidence.**" This standard was not present in the claim considered by the Division in Award 10458 (Wilson) where the claim was for the senior idle Telegrapher (extra in preference) and further requested a joint check of the records to determine the names and amounts due the several employees: The Division found such claim invalid under the rule.

Doubtlessly, there may be situations where knowledge of the specific employe or employees involved lies only with the Carrier and its records will readily identify him or them. This situation may arise where the claim is on behalf of a group such as is presented by the dispute described herein. But even in such cases the claim must be stated with sufficient exactness to permit orderly handling on the property and before the Division if it should be brought to the Board. In Award 10576 (LaBelle) the claim was held valid where it was for "all employees holding a seniority right to perform work in the B&B Sub-department on the Yuma Division." The award said: "The individuals involved in this claim can without too much difficulty, be ascertained and identified." But in Award 9250 (Stone) where the dispute, as here, involved contracting out work in violation of the scope rule, the claim for "all affected employees, for each day unassigned or the difference in rates of pay, based on the number of positions bulletined and required, starting on December 27th, 1954," was held to be invalid. The Division said, in part, "The employees involved in the claim here submitted are neither named or identified. Section 1(a) of Article V of August 21, 1954, relied on by petitioner also requires that all claims or grievances must be presented by or in behalf of the employe involved. Where there is no identifiable Claimant in whose behalf the claim is made there is no proper claim before us upon which to act and the tendered claim should be dismissed."

These awards, and others which have also been examined, disclose that Article V does not require that the "employe involved" be named but he must be so described as to be readily identifiable. As was said in Award 9205 the Claimant must be identified, if not named, in such manner as not to require further evidence. The reason for this is that the description of the employe involved ought not to give rise to a further dispute as to his identity.

In the dispute now before the Division the claim as presented to the Carrier on July 2, 1957 was for "The men in SC&E Gang #10". In the Organization's submission it identifies a gang of 16 men. When handled on the property, these men were not so identified. In the Carrier's submission it asserts that Gang 10, on the dates involved, consisted of 23 men.

The claim describes the work performed as digging holes and setting nine (9) poles and 8 holes for anchors, and requests that each man in SC&E Gang #10 entitled thereto be paid at their respective rates of pay pro rata not less than 8 hours each day as listed in part (A) of the claim. Were all the men in Gang #10 entitled to the work in question. The Carrier asserts, and it is not denied, that there was less than 79½ man hours of work involved. The language of the claim and description of the work raises a question as to whether every man on Gang #10 was "entitled" to the work. If so, is the claim for 16 men or 23 men? If only part of the men of Gang #10 were "entitled" to the work, they are not described so as to be readily identifiable. These conflicts we are unable to resolve here,

and must conclude that the claim as filed did not meet the degree of certainty required by Article V, and it should therefore be dismissed.

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 claim is barred.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1963.

DISSENT TO AWARD 11038, DOCKET SG-10548

Even a cursory reading of this Award is sufficient to disclose that in dismissing the claim the majority, that is, the Referee and the Carrier Members, have required of the Employees a degree of preciseness far greater than reasonable minds would find necessary to comply with either the Agreement, or any other requirement pertaining to the filing of claims. Therefore, I dissent.

G. Orndorff
Labor Member