

Award No. 11174
Docket No. SG-10127

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Seaboard Air Line Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement when it allowed and/or permitted officers of the Carrier who are not classified in the current Signalmen's Agreement to perform signal work around F&J Junction at or near Jacksonville, Fla., on September 8, 1956, from 9:30 A. M. to 7:00 P. M. and on Sunday, September 9, 1956, from 10:00 A. M. to 9:00 P. M.

(b) The Carrier now pay Messrs. W. O. Judy, Leading Signalman, C. O. Stone, Signalman, and L. A. Bastian, Assistant Signalman, at their respective overtime rates of pay for all time worked by the officers of the Carrier while performing signal work on September 8 and 9, 1956, at or near Jacksonville, Fla., around F&J Junction.

(c) The Carrier further violated the current Signalmen's Agreement when it allowed and/or permitted an officer of the Carrier not classified in the current Signalmen's Agreement to perform signal work on October 23, 1956, at or near Market Street, in Jacksonville, Fla. The time spent by the Carrier official in performing the signal work in this part of the claim amounted to six hours.

(d) The Carrier now pay W. O. Judy, Leading Signalman, for the time specified in part (c) of this claim at his respective overtime rate of pay. [Carrier's File Sig. 8]

EMPLOYEES' STATEMENT OF FACTS: W. O. Judy, Leading Signalman, C. O. Stone, Signalman, and L. A. Bastian, Assistant Signalman, employees in Signal Construction Gang #9, were engaged in performing the signal work of installing new signals around F&J Junction at Jacksonville, Fla. The signal gang worked on this new signal installation on Friday, Sep-

with the understanding that your request for representation of the above positions will be withdrawn from mediation.

Very truly yours,

/s/ J. C. Wroton
General Manager.

cc—

Mr. H. J. Edge, General Chairman
Brotherhood of Railway Signalmen of America,
Aberdeen, North Carolina.

cc—

Mr. G. S. MacSwan"

The claim filed in December 1952 is now before the Third Division (Docket SG-7854) involving the same principle of whether "testing and inspecting" as referred to is signal work coming under the scope of the Signalmen's Agreement.

There is no merit to the contention of the Brotherhood and the instant claim should be denied.

Carrier affirmatively states that all data contained herein has been made known to or discussed with Brotherhood representative.

OPINION OF BOARD: On October 23, 1956 the Employees' General Chairman wrote to the Carrier's General Construction Supervisor stating that certain supervisory personnel performed "recognized signal work on Saturday, September 8th, from 9:30 A. M. to 7:00 P. M., and on Sunday, September 9th, from 10:00 A. M. to 9:00 P. M., in connection with new construction work around F & J Junction, at or near Jacksonville, Florida, in violation of the Signalmen's Agreement." Claim was made on behalf of W. O. Judy, Leading Signalman, C. O. Stone, Signalman, and L. A. Bastian, Assistant Signalman, who were regularly assigned to installing signal facilities and who did not work those two days because they were their rest days.

On October 30, 1956, the Employees' General Chairman again wrote to Carrier's Construction Supervisor stating that the Carrier accept an additional claim "on behalf of W. O. Judy, Leading Signalman, to be paid for all time worked by W. J. Goodwin, Assistant Signal and Telephone Supervisor, on October 23, 1956, while performing signal work at or near Market Street in Jacksonville, Florida, at which time Mr. Goodwin changed-out relays in the relay house, pulled out temporary wires and installed permanent wires on terminals, in connection with new signal work being done by a signal gang in which Mr. Judy was working."

The Carrier declined the claim contained in the Employees' letter of October 23, 1956 because "the Signalman's Agreement between the Seaboard Air Line Railroad Company and the B R S of A employees was not violated." At the same time the Carrier refused to accept the additional claim contained in Employees' letter of October 30, 1956. In this connection the Carrier said, "should you wish to enter this as a separate claim, we will accept it."

It is a well established principle of this Board that Construction Supervisors have the right and duty to inspect and test equipment installed by

subordinates. In Award 8293 (Bailer) involving the same parties and the same Agreement we said:

“We think the consistent past practice on this question and the parties’ discussion of the matter during their negotiation of the subject Agreement reflect their mutual intent that the inspection and testing of the nature here at issue is not included within the Scope Rule. To sustain the Petitioner’s contention on this phase of the case would amount to granting the employees that which they failed to obtain through negotiation.”

The conditions have not changed and the Award is not palpably erroneous. We affirm this principle as applicable to the issue here involved.

Whether or not work other than testing and inspecting was performed on September 8 and 9, 1956 is a matter of evidence which must be presented on the property. The record does not disclose evidence presented on the property to show that any work other than testing and inspecting was performed. This Board firmly holds to the principle that this contention cannot initially be made before the Board (Awards 5469 — Carter, 3950 — Carter, 6500 — Whiting, 6657 — Wyckoff, 7036 — Whiting, and 8324 — McCoy).

For the reasons herein stated the claim on behalf of employees for work performed on September 8 and 9, 1956 cannot be sustained.

We do not agree with the Carrier that the claim of Signalman, W. O. Judy for work performed on October 23, 1956 “is not properly before the Board as it was not filed in accordance with the requirements of Article V of the National Agreement of August 21, 1954.” Section 1 (a) of Article V of that Agreement provides in part, that:

“All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based.”

A claim was presented on the October 23, 1956 occurrence by letter to the Carrier dated October 30, 1956, well within the 60 day limitation. The claim for the September 8 and 9 occurrence was presented to the Carrier by letter dated October 23, 1956 also within the 60 day limitation. While the occurrences were 44 days apart, the presentations were only seven days apart and both were well within the limitations provided for in Section 1 (a) of Article V of the National Agreement of August 21, 1954.

There is nothing in the Railway Labor Act, nothing in the Rules of Procedure of the National Railroad Adjustment Board, nothing in the National Agreement of August 21, 1954, nor in the Rules of the Agreement between the parties, which justifies Carrier’s refusal to accept this claim. The Railway Labor Act brings within the jurisdiction of the Board all “disputes between an employee or groups of employees and a Carrier or Carriers growing out of grievances . . .” The United States Supreme Court in *Pennsylvania Railroad Co. vs. Day* (360 U. S. 548) has held:

"The National Railroad Adjustment Board was established as a tribunal to settle disputes arising out of the relationship between carrier and employee."

The National Agreement of August 21, 1954, sets out the procedures and time limitations for the presentation and the processing of such grievances. There is nothing in that Agreement which prohibits an employee from merging several claims between the same parties, arising out of the same Agreement and involving identical issues, providing each of the claims are presented within the time limits provided in Section 1 (a) of Article V thereof, and provided that the claims are presented in accordance with the other provisions of that Agreement.

The Carrier refused to accept the claim which occurred on October 23, 1956. It never disallowed it. Section 1 (a) of the August 21, 1954 Agreement further provides, in part, as follows:

"Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

On November 16, 1956 the Carrier wrote to the Employees as follows:

"We cannot accept this as addition to the claim mentioned in your letter of October 23, and should you wish to enter this as a separate claim, we will accept it."

On January 22, 1957, the Carrier wrote to the Employees stating that "the addition that you asked to be made to the original claim will not be replied to in this letter and if you wish to make an additional claim as outlined by Mr. Barker, it will be handled and treated as a new claim when received." At no time did the Carrier decline the claim on its merits. For that reason we are obliged to hold that the Carrier has failed to notify the Employees that the claim was disallowed in accordance with Section 1 (a) of Article V of the National Agreement and we are obliged to hold that the claim of October 23, 1956 is allowed. We are not in a position to rule on the merits because that is not before us.

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 with respect to claim (a) and (b) and did violate the Agreement with respect to claim (c) and (d).

AWARD

Claim (a) and (b) is denied.

Claim (c) and (d) is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1963.