

Award No. 11451

Docket No. SG-10895

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Louisville and Nashville Railroad Company that:

On or about October 9, 10, 11 and 16, 1957, the Carrier assigned or otherwise allotted a portion of the work covered by the Signalmen's Agreement to a person or persons who are not covered in said agreement, namely, M. of W. Employees assigned to dig trenches for signal cables and pipelines in the New Yard, Boyles, Alabama, 2, 8, 5 and 2 hours, respectively, on the above mentioned dates, and continued to do so on later dates.

Therefore, this is a claim of the Brotherhood that the Carrier violated the current Signalmen's Agreement, especially Rule 1, Scope, and continues to do so, in assigning generally recognized signal work to persons who are not covered by the agreement; and that, because of this violation, the employees assigned to Signal Gang No. 1 on the Birmingham Division be paid for an equal amount of time as that required by those persons not covered by the agreement to perform the work of digging trenches for signal cables and pipelines, amounting to 17 hours as of October 26, 1957. [Carrier's file G-304-12, G-304]

EMPLOYES' STATEMENT OF FACTS: During October 1957 the Carrier was constructing a hump yard at Boyles, Alabama. A hump yard is a type of freight car classification yard that includes a car retarder system that has compressed air pipe lines attached thereto. The car retarder system is a part of the signal system that is exclusively maintained by the Signal Department employees who are covered by the Signalmen's Agreement. The pipe lines connect the air compressor plants to the car retarder system and all of the compressor plants and pipe lines connected thereto are exclusively maintained by the employees who are covered by the Signalmen's Agreement.

During the construction of the new Boyles Yard, Signal Gang No. 1 on the Birmingham Division was assigned to perform signal work therein.

Beginning on or about October 9, 1957, the Carrier caused, assigned and allowed Maintenance of Way employees, who are not covered by the current

pipes, a qualified maintenance of way operator being used to operate the machine account none of the employees in Signal Gang No. 1 having qualified to operate the machine at the time involved in the claims.

Also, as previously stated by carrier, a signalman was assigned to direct the operation of the machine and at the same time post on the operation of same, the signalman being paid the same compensation he would have received had he operated the machine.

The balance of the employees in Signal Gang No. 1 performed the same work during the digging of the trench that they would have performed had a signalman instead of a maintenance of way employee operated the machine.

Carrier therefore submits it is obvious that the employees of Signal Gang No. 1 in fact suffered no loss of work or compensation because a maintenance of way employee instead of a signal employee operated the machine on the dates here involved.

Signal employees have subsequently qualified to operate the trenching machine and have used the machine in digging trenches in connection with their work.

As the employees suffered no loss, carrier submits there is no proper basis for the claim and same should be denied.

All matters referred to herein have been presented, in substance, by the carrier to representatives of the employees, either in conference or correspondence.

OPINION OF BOARD: On the dates specified in the Statement of Claim, the Carrier used a trench-digging machine to dig trenches for signal cables and pipelines at Boyles, Alabama, Yard. An employee not covered by the Signalmen's Agreement actually operated the machine but a Signalman was placed on it and paid for the time spent on the job.

It is conceded that the work belonged to Signalmen under the Agreement, but it is not denied that no Signalman at the time was qualified to operate the trench-digging machine.

Under this set of facts, the claim is without merit and will be denied.

As to Petitioner's contention that the Carrier violated Article V of the National Agreement of August 21, 1954, (Time Limit Rule), it suffices to say that the charge comes too late. It was not raised on the property and must, therefore, be deemed to have been waived. (Awards 10075, 11034).

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 27th day of May 1963.