Award No. 11887
Docket No. MW-11468

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective Agreement when, on October 24, 1957 and thereafter, it assigned and used other than Track Department employes to perform the work of oiling switches at Markham Yard on the Chicago Terminal Division.

(2) The decision by Division Engineer Megee, dated January 24, 1958 and the decision by Superintendent Bodell, dated February 11, 1958, were not in conformance with the requirements of Section 1 (a) and (c) of Article V of the August 21, 1954 Agreement.

(3) Because of the violations referred to in Parts (1) and (2) of this Statement of Claim, the Carrier now be required and directed to allow the following claim which was presented on January 20, 1958, in behalf of Section Laborers John McMillan and F. E. Thompson:

> "* * * should be paid at pro-rata time eight (8) hours each workday for 60 days prior to this claim and continued thereafter until track department employes are reassigned to do this work."

EMPLOYES' STATEMENT OF FACTS: The facts surrounding the presentation of this claim are substantially set forth in the letter of claim presentation (referred to in Part (3) of the Statement of Claim), which reads:

"1102 Dunlop
Forest Park, Illinois
January 20, 1958

Mr. J. H. Megee
Division Engineer
Illinois Central Railroad
135 East 11th Place
Chicago 5, Illinois

The claim should be dismissed or denied.

All data in this submission have been presented to the Employes and made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Employes contend that Carrier's officers during handling of the claim on the property failed to give a reason for disallowing the claim as required by Section 1 (a) and (c) of Article V of the applicable August 21, 1954 National Agreement. The reason given was:

> "Claim was presented in your letter dated January 20, 1958 account work performed by Signal Department employes on oiling switches on the north and south Humps at Markham Yard, Illinois, on October 24, 1957.
>
> "Claim is declined on the basis that no violation of the agreement is involved."

The statement of reason, read with the letter therein referred to, is sufficient. Awards 9835 (La Driere), 10400 (Mitchell), 11231 (Sheridan), 11208 (Coburn) and 11441 (Dolnick).

Exhibits are attached to Employes' ex parte submission which show by the date thereof that they could not have been exhibited to Carrier during handling of the claim on the property. Carrier made no objection to such exhibits at its first opportunity. However, the pertinent part of Circular No. 1 of this Board provides that the ex parte submission shall set forth:

> ". . . all relevant, argumentative facts, including all documentary evidence submitted in exhibit form, quoting the agreement or rules involved, if any; and all data submitted in support of employes' position must **affirmatively** show the same to have been presented to the carrier and made a part of the particular question in dispute." (Emphasis ours.)

Accordingly, such exhibits are excluded from our consideration. See Award 11128 (Boyd).

Employes object in rebuttal submission to Exhibit I attached to Carrier's ex parte submission. Exhibit I is a letter dated August 31, 1955, to a Carrier officer, asserting on behalf of the Brotherhood of Railroad Signalmen the right to the work involved in the instant claim. The objection is on the ground:

> "Carrier's Exhibit 'I' represents new matters not heretofore made known to the Employes or made a particular part of this dispute. Hence, it merits no consideration by the Division."

To the contrary, Carrier's ex parte submission affirmatively states:

> "All data in this submission have been presented to the Employes and made a part of the question in dispute."

Whether Carrier's defense of past practice was raised while the claim was being handled on the property, is not clear from the record. The only record reference by Carrier on the point is in the letter dated August 15, 1958, from Carrier's Manager of Personnel to Employe's General Chairman:

> "Without prejudice to this defect in handling, our investigation discloses that the work in dispute is performed by employes of the Signal Department and represented by another Craft Organization. We find no rule in the current agreement giving such work exclusively to the employes of your craft."

The work involved is the oiling of the plates of power-operated (electro-pneumatic and electric) switches in the Markham Yard of Carrier's Chicago Terminal.

Employes assert that their craft has done this work at this location from the building of Markham Yard in 1925 until October 24, 1957, when Carrier assigned the work to Signalmen; Carrier asserts that the work has flowed back and forth between Maintenance of Way Employes and Signalmen, and denies that performance of the work by Maintenance of Way Employes was exclusive.

Employes assert that the work required the service of two men for eight hours per day; Carrier asserts that the work required only a total of 12 man-hours per week, and that the same is incidental to general maintenance services performed by Signalmen on the same switches.

Carrier asserts a past practice of dividing the work of oiling switch plates between two crafts: Maintenance of Way Employes on manually operated switches and Signal Employes on electric or electric-pneumatic switches; Employes deny such practice.

Carrier asserts that Signal Employes oil switch plates on automatic switches at other points on the Chicago Terminal; Employes deny the assertion.

The record is replete with assertion and counter-assertion, but devoid of competent probative evidence. Under this state of the record we are constrained to adopt the succinct opinion in Award 10740 (Miller):

> "The paucity of the evidence presented and exchanged by the parties during the handling of this dispute on the property requires dismissal of the Claim. Please see Circular No. 1 of the Board.
>
> * * * * *"

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 Employes involved in this dispute are respectively Carrier and Employes 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 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.