

Award No. 11917
Docket No. SG-11143

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Lehigh Valley Railroad Company that:

(a) The Carrier violated the Classification Rules of the current Signalmen's Agreement when it used a Relay Inspector to perform work designated as Signalmen's work on the following dates at the following locations:

December 6, 1957	South Plainfield
December 11, 1957	Pattensburg
December 16 and 17, 1957	Port Reading
December 19, 1957	West Richards
December 30, 1957	Abbott St., South Easton
December 31, 1957	East Richards
January 2, 1958	Abbott St., South Easton

(b) Mr. M. J. Sar be paid one (1) day's pay for each date listed above at the Signalman's rate of pay for the above violation.
[Carrier's file 809.1-S]

EMPLOYEES' STATEMENT OF FACTS: Mr. M. J. Sar had been assigned to a position as Leading Signalman on a construction gang. On December 6, 11, 16, 17, 19, 30 and 31, 1957, and January 2, 1958, the Carrier assigned, required and/or permitted a Relay Inspector to install new signal circuits and relays at various locations. Inasmuch as the Classification Rules of the Signalmen's Agreement clearly define the difference between the duties of a Relay Inspector and a Signalman, Mr. Thomas F. DeRose, Local Chairman, presented the following claim to Mr. C. F. Nelson, Signal Construction Engineer, on February 5, 1958:

"The Local Committee has been directed to present this claim in behalf of Mr. M. J. Sar, Leading Signalman, in the Signal Construction gang at Catasauqua, Pa.

"Dear Sir:

"This will confirm my decision given you at conference today in connection with claim of G. J. Fech and M. J. DeSousa on account of testmen being used to perform certain construction work at Newark Interlocking, that I do not consider there was any violation of the rules of your agreement in testmen being used to perform the work on which this claim is based.

"Switches 35 and 39 controlling the loop track where engines are changed were worn to the point where they required renewing, and it was necessary to revise the control of these switches by wiring changes and relays in lieu of the worn equipment. The changes were made under traffic conditions, and testing was required before movement could be made by signal indication. Therefore, the work involved included changing and testing.

"In this connection, I call your attention to the provisions of Article 2, Section 20, of the schedule agreement which provides that when higher rated employees are temporarily used to perform lower rated work, the employees will be paid the higher rate, and that is exactly what was done in this case. Even in view of this, I advised you that I would be willing to agree to an understanding for the future in cases of similar work and circumstances that would be a basis for determining what class of Signal Department employees would be used as between men working in construction and other classes, and I am still willing to do this if you desire.

Yours truly,

/s/ C. L. Wagner
Chief of Personnel"

In conclusion, the Carrier respectfully reasserts that the instant claim is entirely without support under the governing agreement rule and should either be denied in its entirety or dismissed for the reasons previously set forth herein.

The facts presented in this submission were made a matter of discussion with the Committee in conference on the property.

OPINION OF BOARD: There is conflict in the record relative to facts essential to a proper determination of this dispute. This Board has no method whereby it can resolve conflicts in evidence. In view of the above considerations the claim must be dismissed.

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 claim should be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November 1963.