Award No. 11980
Docket No. SG-11657

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

GALVESTON, HOUSTON AND HENDERSON RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Galveston, Houston and Henderson Railroad Company:

> In behalf of Mr. J. T. Harrison, Signal Maintainer at Harrisburg, Texas, for 72 hours at his regular assigned rate of $2.54 per hour on November 5, 6, and 7, 1958, when the Carrier assigned and/or permitted Bridge and Building employes to set forms and pour concrete for crossing signal foundations at Bowie Street in violation of the Scope Rule of the current Signalmen's Agreement.
> [Carrier's File No. 29]

EMPLOYES' STATEMENT OF FACTS: Mr. J. T. Harrison is the regular assigned Signal Maintainer for this Carrier with headquarters at Harrisburg, Texas. On November 5, 6, and 7, 1958, the Carrier assigned three (3) Bridge and Building employes, who hold no seniority or rights under the Signalmen's Agreement, to perform the signal work of setting forms and pouring concrete for foundations for crossing signals at Bowie Street on Signal Maintainer Harrison's regular assigned signal maintenance territory.

In view of the fact that recognized signal work was performed on his assigned territory by other than signal employes, Signal Maintainer Harrison submitted a time claim to Superintendent W. E. Westrup for seventy-two (72) hours at his regular assigned Signal Maintainer's rate of $2.54 per hour. Superintendent Westrup denied the claim in a letter to Signal Maintainer Harrison dated December 2, 1958, and Signal Maintainer Harrison turned the claim over to General Chairman L. Y. Ballard, of the Brotherhood of Railroad Signalmen, for further handling on the property. Under date of January 15, 1959, General Chairman Ballard progressed the claim to Superintendent Westrup in a letter which read as follows:

> "I am in receipt of a time claim in favor of Mr. J. T. Harrison, Signal Maintainer at Harrisburg, Texas which he has claimed 72 hours at his regular assigned rate of $2.54 per hour on November

3. The long established practice under the Agreement on this property, as indicated in Carrier's Exhibit "C," refutes and denies the interpretation of the Agreement contended for here by the Petitioner, and definitely supports the Carrier's position.

4. There is no basis for an affirmative award.

All data submitted in support of the Carrier's position have been heretofore submitted to the Employes or their duly accredited representatives.

The Carrier requests ample time and opportunity to reply to any and all allegations contained in Employes' and Organiaztion's submission and pleadings.

Except as herein expressly admitted, the Galveston, Houston, and Henderson Railroad Company denies each and every, all and singular, the allegations of the Organization and Employes in alleged, unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Galveston, Houston and Henderson Railroad Company respectfully requests the Third Division, National Railroad Adjustment Board, deny said claim and grant said Railroad Company such other relief to which it may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim arose over the use of Bridge and Building employes in the erecting of a concrete foundation for a crossing signal in violation of the Scope Rule of the current Signalmen's Agreement.

The Claimants contend that the work was clearly within the Scope Rule of the Signalmen's current agreement with the Carrier.

The Carrier contends that the claim was not supported by the agreement, nor a practice on the property for signalmen to do this work. Furthermore, the claim has a procedural and jurisdictional defect in that the appeal was untimely made to the next highest officer. Such claim had to be made within 60 days after being declined by an officer of the Carrier as required by Article V. 1(b) of the August 21, 1954 National Agreement. Thus, two questions are presented in this claim:

1. Does Article V. 1(b) of the National Agreement constitute a jurisdictional bar to our consideration of the claim when an appeal is not taken within 60 days?

2. Does this work come within the Scope Rule of the Signalmen's Agreement?

A review of the facts reveals that the claim was denied by letter of December 2, 1958 by the Carrier. The Organization subsequently wrote to the Carrier on February 1, 1959 which letter Carrier received on February 2, 1959 appealing the declined claim notice of December 2, 1958. Thus, more than 60 days had elapsed. On February 2, 1959 Carrier by letter concurred in its letter of December 2, 1958. In addition on March 17, 1959 the Carrier by letter

to the Organization stated that the claim was barred by Article V, claim not being appealed as provided for in that rule.

The record reveals no argument or defense on the part of the Organization as to why the appeal from the Carrier's decision was not taken within the 60 day period. An examination of Article V. 1(b) states:

> "If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with the provision, the matter shall be considered closed, . . ."

Thus, we are of the opinion that from the facts and record before us, the appeal was untimely made as provided for in Article V of the August 21, 1954 Agreement, which required that the claim be appealed within sixty (60) days from December 2, 1958 when the claim was denied. Furthermore, the record shows no defenses were presented for the alleged untimeliness of the claim.

Thus, it is unnecessary to rule on the second question presented herein.

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 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

The Organization failed to comply with Article V. 1(b) of the National Agreement of August 21, 1954.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1963.