

Award No. 12073

Docket No. SG-11422

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company that:

(a) The Southern Pacific Company violated the current Signalmen's Agreement dated April 1, 1947 (reprinted April 1, 1958 including revisions), particularly the Scope Rule and Rules 2, 13, 16 and 70.

(b) Mr. J. J. Miller be reimbursed the amount of \$31.92, the amount claimed on time sheet for first period May, 1958 which was paid but subsequently deducted from his second period earnings for May. [Carrier's File: SG-152-58]

EMPLOYEES' STATEMENT OF FACTS: During May, 1958, Mr. J. J. Miller, the claimant in this dispute, was filling the position of CTC Maintenance Foreman, with headquarters at Niland, California, while the regular incumbent of that position was absent due to illness.

About 2:00 A. M., May 1, 1958, the Carrier called Mr. G. K. McDowell, Signal Maintainer, and Mr. R. L. Hall, Assistant Signal Supervisor, to the scene of a derailment at the west end of Niland. The claimant was not called to this derailment until about 6:00 A. M. on that date.

About 3:00 A. M., May 8, 1958, the Carrier called Mr. D. D. Harris, Signal Maintainer, and Mr. R. L. Hall, Assistant Signal Supervisor, to investigate signal trouble at the east end of Glamis. Mr. Hall worked until 6:00 A. M. in connection with that signal trouble, and the claimant was not called.

On his semi-monthly time roll for the first period of May, 1958, the claimant claimed overtime pay for the period from 2:00 A. M. to 6:00 A. M., May 1, 1958, and from 3:00 A. M. to 6:00 A. M., May 8, 1958, to cover the times that the Assistant Signal Supervisor had performed work that should have been performed by the CTC Foreman. This amount was included in the claimant's payroll voucher for that period. However, on May 20, 1958, Mr. P. D. Robinson, Superintendent, wrote the following "Mailgram" to Mr. J. J. Miller, Signal Foreman:

CONCLUSION

Carrier requests that the claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue is whether work done by a Signal Maintainer, on two separate occasions, could be handled alone by the Signal Maintainer. It is the position of the Petitioner that the work could not so be handled by the Signal Maintainer and that Claimant, the Maintenance Foreman, should have been called out to assist him. Instead, the Assistant Signal Supervisor was called. This was in violation of the Agreement, particularly the Scope Rule and Rules 2, 13, 16 and 70.

The record shows that on May 1, 1958 the train dispatcher notified Signal Maintainer McDowell and Assistant Signal Supervisor, Hall about 2:00 A.M., that a derailment had occurred at the west end of Niland. No work could or was done until the arrival of the relief crane about 6:00 A.M. Claimant went on duty at 6:00 A.M. and supervised the work performed by signalmen.

On May 8, 1958 the train dispatcher called Signal Maintainer, Harris and Assistant Signal Supervisor, Hall at about 3:00 A.M., and notified them that there was a signal interruption at the east end of Glamis. Harris called Hall on the telephone and advised him that the "trouble was in one of the KP relays; that he had not had time to check, as he was moving trains by operating the emergency panel." After Hall "arrived at the east end of Glamis, Signal Maintainer Harris had completed changing the KP relay and signals were functioning normally."

The record does not show that the Assistant Signal Supervisor, Hall performed any supervisory work normally the function of the Claimant as Maintenance Foreman. On May 1, 1958, no signal work was performed until Claimant came to work. On May 8, 1958, the Signal Maintainer changed the KP relay before Hall arrived at the scene of trouble.

There is no provision in the Agreement that Carrier is required to assign a foreman to all work. In Award 11441, with the same Referee, we said:

"We have consistently held that, unless otherwise specifically provided in the Agreement, Carrier has the sole and exclusive right to determine when and under what circumstances a foreman is assigned to supervise a group of employees. Awards 11075 (Dorsey), 7059 (Carter), 6699 (Donaldson), and 6398 (McMahon)."

Petitioner has failed to prove that the Assistant Signal Supervisor, Hall performed foreman's work on May 1 or May 8, 1958. On the contrary, the record shows that no signal work at all was performed on May 1 until Claimant arrived, and the work done on May 8 was finished by the Signal Maintainer before Hall appeared at the scene. No supervision was necessary.

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of January 1964.