

Award No. 12096

Docket No. SG-11591

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, 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 current Signalmen's Agreement, as amended, especially the Scope, when, on April 16, 1958, it allowed and/or permitted a Welder and his Helper, who are not covered by the Signalmen's Agreement, to perform signal work of removing signal equipment from the signal bridge west of Catasauqua Tower.

(b) The Carrier should now compensate Mr. Andrew H. Beatty for one day at the Signal Welder's rate (\$20.00), and for one day at the Signal Helper's rate (\$17.12), for the above violation.
[Carrier's File: 809.1-S]

EMPLOYES' STATEMENT OF FACTS: During part of April 1958, the Carrier's signal employees were engaged in the installation of new signal equipment at Catasauqua, Pa. The placing of the new signal equipment into service necessitated the removal of the old signal equipment. On April 16, 1958, a Maintenance of Way Welder and his helper, who hold no seniority or other rights under the Signalmen's Agreement, were allowed to remove signal equipment from the signal bridge just west of the old Catasauqua Tower.

On June 14, 1958, Mr. Thomas F. DeRose, Local Chairman, presented the following claim to Mr. W. J. Varner, Signal Construction Engineer:

"The Local Committee has been directed to present this Claim in behalf of Mr. Andrew H. Beatty, for one (1) day's pay at the Signal Welder's rate and one (1) day's pay at the Signal Helper's rate.

Claim (a) That the Carrier violated the Scope of the Signalmen's Agreement, when it used other than Signal employees on April 16th, 1958, to perform signal work at Catasauqua, Pa.

POSITION OF CARRIER: On April 16, 1958 Signal Department employees were engaged in dismantling and removing old signal apparatus installed on signal bridge at Catasauqua, Pa., and while engaged on this work alleged that Maintenance of Way welder and helper, who had been sent to the signal bridge to remove brace irons which obstructed the view of the new signals that had been installed and which was admittedly Maintenance of Way employees' work, performed signal welder and signal helper's work when they assisted the signalmen by burning off bolts that held the signal mechanism and the signal pole.

In the handling of this claim on the property there was no proof or evidence, other than the claim as submitted, to support the claim that Maintenance of Way welder and helper did assist the signalmen as alleged. There is no record of any instructions being given to the Maintenance of Way welder in the instance of this dispute by any supervisory officer of the Carrier at the point to perform any welding or burning work at the signal bridge other than to cut off brace irons that were obstructing the view, and this was Maintenance of Way work. It is clearly evident that if the Maintenance of Way welder and his helper did perform the work as alleged in this claim, same was performed voluntarily and without knowledge of the Company, or that it was performed at the request of the signal employees themselves who were working at the point at the time to assist them in the work in which they were engaged.

In Award 7793 of this Division the opinion of the Board, in part, reads:

"Prior awards of this Division have held without exception that the burden of proof rests upon those presenting a claim. . . . While the affidavit alleges they assisted water service employees, no showing is made that they were so instructed. We have previously held (Award 4992) that voluntary service, absent direction and authority to perform cannot be asserted to support a claim."

The Carrier expressly denies the allegation of the Organization in this dispute that Maintenance of Way welder and helper assisted signalmen at Catasauqua on April 16, 1958 in performing signalman's work, and in the absence of proof or evidence submitted by the Organization in support of their allegation, the Carrier respectfully submits this claim should be denied or dismissed.

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

OPINION OF BOARD: The Petitioner claims that a Welder and his helper were permitted to burn off bolts holding signal mechanism and to help lower them to the ground, which work belongs to Signalmen under the Scope Rule of their Agreement.

Carrier does not deny that this work was Signalmen's work, but it denied responsibility and refused the claim. The Carrier denied any knowledge that the work had been authorized, and asserted that if it had been done, it was done at the request of one of the Signalmen.

The Petitioner advised the Carrier that Mr. C. Nelson, an official of the Carrier, had authorized the work. The Carrier, however, never denied categorically that a welder had done the work or that Mr. Nelson had ordered it done.

While the assertion by the Petitioner should not be considered conclusive proof, the burden of going forward was clearly shifted to the Carrier. Its failure categorically to deny that Mr. Nelson had ordered the work, or to submit any affidavit or evidence as to Mr. Nelson's rule in this incident when Mr. Nelson was available to it, did not meet its burden. We must hold, therefore, that the facts were as presented by the Claimant and that the Carrier had violated the Scope Rule of the Agreement in authorizing a person, not covered by the Agreement, to perform work exclusively reserved to Signalmen.

The Petitioner, however, has asked that the Signalman, Andrew H. Beatty, be compensated for one day at the Signal Welder's rate and for one day at the Signal Helper's rate.

The record is not clear as to the role of the helper. What is clear is that only one day's work was involved. Mr. Beatty could not have done two men's work on that one day, and to reward him with 2 days' pay smacks of unjust enrichment. We shall award him, therefore, one day's pay at the Signal Welder's rate.

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 Carrier violated the Agreement but that the Claimant is entitled to one day's pay at the Signal Welder's rate.

AWARD

The claim is sustained to the extent that the Carrier should compensate Mr. Andrew H. Beatty for one day at the Signal Welder's rate (\$20.00), and denied to the extent that it asked one day's pay at the Signal Helper's rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1964.