

Award No. 12188
Docket No. SG-11681

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Francis M. Reagan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al, that:

(a) The Carrier violated the current Signalmen's Agreement when it assigned and/or permitted Assistant Signal and Electrical Supervisor L. E. Hitt, Jr., to perform the work of handling and transporting certain signal material and equipment by company truck on September 13, October 20 and 21, 1958.

(b) The Carrier therefore be required to compensate Mr. J. P. Swinney, Signal Maintainer with assigned headquarters at Oakdale, Tennessee, to whom the company truck was assigned, for eight (8) hours at his respective overtime rate of pay for each day that Assistant Signal Supervisor L. E. Hitt, Jr. performed the above work in violation of the Signalmen's Agreement. [Carrier's File: SG-12860]

EMPLOYEES' STATEMENT OF FACTS: On September 13, October 20 and October 21, 1958, Assistant Signal Supervisor L. E. Hitt, Jr., used a company truck assigned to Mr. J. P. Swinney, Signal Maintainer with headquarters at Oakdale, Tennessee, for the purpose of loading, handling and delivering a number of coils of signal line wire to various points along the line between Chattanooga, Tenn. and Somerset, Ky. The signal line wire was delivered to the signal forces at the various points for immediate use on the job in making repairs to the signal pole line. Assistant Signal Supervisor Hitt also picked up a paint spray at Roddy, Tennessee, and delivered the spray to Somerset, Ky.

Inasmuch as signal material and equipment was taken from a signal camp car (material car) at Oakdale and delivered to signal field forces for immediate use on the job, a claim reading as follows was filed with Mr. L. C. Brown, Signal and Electrical Superintendent, on October 24, 1958, by General Chairman E. C. Melton, in behalf of Signal Maintainer Swinney for the time spent by Assistant Signal Supervisor Hitt in performing the Signalmen's scope work of hauling and handling signal material:

dence has been in effect. These incidents, as evidenced by the affidavits attached hereto and made a part hereof, clearly reflect the intent and understanding of the parties to the agreement. Moreover, no language in the agreement supports the claim and demand here made. The Brotherhood, having long since conceded the point here at issue, cannot now be heard to complain. The agreement was not violated.

The claim and demand being without basis and unsupported by the agreement in evidence, the Board is left with no alternative but to make a denial award.

(Exhibits not reproduced.)

OPINION OF BOARD: The Board is asked to resolve the question: Does delivery of signal materials in a Carrier's truck by L. E. Hitt, Jr. Assistant Signal and Electrical Supervisor of Carrier constitute a violation of the Scope Rule of that Agreement between the parties dated February 16, 1948 as revised October 23, 1953?

Claim has been made that it does and that J. P. Swinney, a Signal Maintainer has been damaged as a result.

Careful consideration has been given to the content of Rule 1, the Scope Rule and to the facts and circumstances of this claim.

Note has also been made of the following excerpt of Carrier's letter to General Chairman of December 12, 1958:

"As you know, it has always been the practice in the Signal Department to have Storekeepers who handle signal material. Furthermore, such material has been handled in Division storehouses and by express trucks, baggagemen on passenger trains, local freight crews and many others."

and the impact of such practice on the facts of this claim.

It is this Board's determination the Scope Rule has not been violated.

The following is not pertinent to the decision of the case but claim here is brought by Signal Maintainer, J. P. Swinney. A consideration of the job description of signal Maintainer, Article II, Rule 2 (d) of the agreement leaves some doubt if this Claimant would have performed the work the subject of this claim. Rule 2 (f) defines Signal Helper as one "... handling materials ..."

Rule 42 cited in this case by Claimant as authority is not relevant to the question.

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 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 Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of February 1964.