

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN RAILWAY COMPANY

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

In behalf of Mr. M. B. Sandidge, senior Signalman in Mr. F. K. Robinson's gang, to be paid at his respective overtime rate of pay for all time worked by Mr. J. A. Culpepper, signal official, on the basis of eight (8) hours each day, or date, that Mr. Culpepper performed the signal work in violation of the Signalmen's Agreement, or September 30, October 1, 2, 3, 6, and 7, 1958, and thereafter for each day that Mr. Culpepper may be permitted or does perform signal work in violation of the agreement. [Carrier's File: SG-12859]

EMPLOYEES' STATEMENT OF FACTS: During September and October, 1958, a signal gang under the direction of Foreman F. K. Robinson was working at Atlanta, Georgia, making several signal and interlocking changes in the Fair Street Interlocking Plant.

Commencing September 30, 1958, Mr. J. A. Culpepper, a Signal Department official, acted as Signal Foreman instructing and directing Signalman W. H. Denny in the work and changes being made in the Tower Relay room and on the control machine in the Tower. Mr. Culpepper was also observed using tools such as pliers, socket wrench, soldering iron, and wire skinners while wiring relays, replacing wires and connections on the control machine at the Interlocking Plant. Mr. Culpepper performed the above signal work during the regular working hours on September 30, October 1, 2, 3, and 6, 1958. On October 7, 1958, Mr. Culpepper and Signalman Denny moved to Signal No. 88 where they began making wiring changes in the signal relay case at this location. Again Mr. Culpepper was seen actually using signal tools, performing signal work.

Local Chairman J. E. Hyde actually observed Mr. Culpepper perform the signal work and wrote General Chairman E. C. Melton under date of October 21, 1958, advising him of the agreement violation as follows:

"It is my belief that the current agreement has been and is now being violated in connection with the changes being made at the Fair St. Interlocking Plant, located at 379 Fair St. S. W. Atlanta, Ga.

time performing two different and distinct jobs. Furthermore, he was no better qualified to perform the here involved work than was Signalman Denney. Then, too, as already shown, the agreement was not violated in any manner whatsoever. There is not, therefore, any basis for the Brotherhood's demand that Signalman Sandidge be paid two and one-half times his hourly rate on the days involved in the claim and demand here made. Furthermore, the Board is without authority to make an award such as is here demanded by the Brotherhood, because there is no requirement in any language in the Signalmen's Agreement in evidence authorizing any signalman paid for two and one-half times his hourly rate on any day.

Signal and Electrical Construction Supervisor J. A. Culpepper did not perform signal work in violation of the agreement, as alleged, and there is no basis for the claim and demand here made by the Brotherhood. In these circumstances, the Board is left with no alternative except to make a denial award.

(Exhibits not reproduced.)

OPINION OF BOARD: During the autumn of 1958, Carrier made a number of changes in the signal system in the Fair Street interlocking plant at Atlanta, Georgia. Beginning September 30, 1958, under instruction and direction of Signal Supervisor J. A. Culpepper, Signalman W. H. Denny made changes in the tower relay room and on the central machine in the tower. Mr. Culpepper also made wire changes.

Petitioner Mr. M. B. Sandidge, Senior Signalman, contends that Carrier violated the Scope Rule of the Agreement by permitting Mr. Culpepper, a supervisory employe not covered by the Agreement, to perform signal work. He maintains that the work in question is covered by the Scope Agreement and that the work was actually performed by that supervisor.

Carrier denies the claim on the grounds that Mr. Culpepper performed as a supervisor whose duties include inspecting and testing work done by the men under him as well as wiring more difficult circuits which signalmen were unable to do themselves.

The changes in the Central System were of such a nature that they required careful instruction and direction on the part of the supervisor to the signalmen. Mr. Denny was guided by Mr. Culpepper in the performance of the work; but in the course of the directions, incidental to his instructions as supervisor, Mr. Culpepper found it necessary to do some of the difficult wiring. The work he performed was not intended to displace another signalman, but to insure that the wiring at certain points was done with care and skill which his subordinate's experience would not allow despite the fact that Mr. Denny is qualified as a signalman. Claimant Sandidge, who also is a signalman, is no better qualified for this particular job than Mr. Denny. Were he to be assigned to the job, he, too, no doubt, would have required directions and assistance in the wiring at critical places.

In the course of supervising work, there are occasions when the supervisor finds it necessary to actually use tools, as was done in the instant case. We do not interpret this incidental use of tools as an adequate basis for a claim for violation of the Agreement and for compensation for eight hours each day that Mr. Culpepper performed the alleged signalman's work. The claim is denied.

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 of the parties was not violated.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of February 1964.

LABOR MEMBER'S DISSENT TO AWARD NO. 12231 **DOCKET NO. SG-11630**

Award 12231 commits serious error in that it creates an exception to an agreement that was not intended by the parties. The record and agreement are clear that the work performed by the Supervisor is work covered by the Scope of the agreement and reserved to employees classified therein, without exception.

It is axiomatic and has long been recognized that this Board is without authority to modify the unambiguous agreement. Award 12231 violates this established principle.

Award 12231 is in error, therefore, I dissent.

W. W. Altus