

Award No. 12402
Docket No. SG-11596

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 Article IV, Section 14, and Article V, Section 8, when, on July 24, 25, 28, 29, 30, 31, August 1, 4, 5, 6, 7, 8, 11, and 12, 1958, it allowed signal maintenance forces to perform signal construction work near Cementon, Pa., instead of recalling and using employees who had been laid off by reason of force reduction.

(b) The Carrier should now be required to compensate Mr. Philip Rocarro eight hours at the Signalman rate, and Mr. George Fech eight hours at the Signal Helper rate, for each day listed in paragraph (a) above.

EMPLOYES' STATEMENT OF FACTS: Prior to April 18, 1958, signal employees were engaged in signal construction work in the vicinity of Cata-sauqua, Pa. On April 10, 1958, the Carrier issued a notice that certain signal positions would be abolished effective with the close of business on April 18, 1958. Included in the positions so abolished were those held by Messrs. P. Rocarro and G. J. Fech.

On July 24, 25, 28, 29, 30, 31, August 1, 4, 5, 6, 7, 8, 11 and 12, 1958, the Carrier required Signal Maintainer D. Robbins and Signal Helper J. G. Bennett, who had been assigned to signal maintenance positions on the signal maintenance territory that extends from mile post 97.1 to mile post 119.5 (Catasauqua to Lehighton, Pa.), to suspend work on their regular maintenance assignment and perform signal construction work of installing signal cut sections west of Cementon, Pa. On August 30, 1958, Mr. Thomas F. DeRose, Local Chairman, presented the following claim to Mr. W. J. Varner, Signal Construction Engineer:

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the agreement between the parties and to decide the present dispute in accordance therewith. The Organization in presenting this dispute seeks to obtain the equivalent of a new rule by asking this Board to sustain the instant claim in the absence of a rule to support it. In view of the many awards this Board has rendered against such action, we feel certain that the Board will not even attempt to do so. That this Board will not make agreements nor write rules has been decided in many awards. A few such awards of the Third Division are: 2029, 2612, 2622, 2744, 3244, 3737, 4270, 4304, 4322, 4386, 4819 and 5597.

In the handling of this dispute on the property, the Employes submitted no evidence to support their contention as set forth in this claim.

In conclusion, the Carrier respectfully reasserts that the instant claim is entirely without support under the governing agreement rules and should either be denied in its entirety or dismissed for the reasons previously set forth herein.

OPINION OF BOARD: Neither the agreement nor other evidence of record distinguish between work which may be assigned to maintainers and construction forces. Being thus without a guide, the Board finds that the claim must be denied.

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

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of April 1964.