

Award No. 12907

Docket No. SG-11824

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, particularly the Scope and Classification Rules, when on October 28 and 29, 1958, it assigned and/or permitted Signal Testman R. H. Harris to perform work at Rte. 40 near Madison Illinois, which was not a part of his regular assigned Testman's duties.

(b) The Carrier now be required to compensate Signalman S. C. Arnold for 16 hours at the Signalmen's rate of pay account the above violation. (Carrier's File No. 135-214-88, Case No. 69 Sig.)

EMPLOYES' STATEMENT OF FACTS: Mr. S. C. Arnold, the claimant in this case, holds seniority in the Signalmen's class but is presently working as an Assistant Signalman for this Carrier due to no positions or vacancies being available in the Signalmen's class.

Mr. R. H. Harris is assigned to a position of Testman for this Carrier on the Springfield Division. On October 28 and 29, 1958, the Carrier assigned and/or permitted Testman Harris to install signal parkway cable for the highway crossing protection flasher signals at Rte. 40 near Madison, Illinois.

Inasmuch as the Classification Rules of the Signalmen's Agreement clearly define the difference between the duties of a Testman and a Signalman, Mr. LeRoy Harley, Local Chairman, presented the following claim in behalf of Mr. S. C. Arnold to Mr. F. T. Kraft, Division Engineer, under date of December 1, 1958:

"Please accept this letter as claim filed in behalf of Mr. S. C. Arnold 16 hours time at Signalman's rate of pay for work performed by Testman R. H. Harris.

On October 28, 1958 Testman R. H. Harris worked 8 hours installing parkway cable at flasher signal, by pass 40 near Madison, Illinois.

In Third Division Award 7793, this Board stated in its Opinion:

"Prior awards of this Division have held without exception that the burden of proof rests upon those presenting a claim. The main evidence of record here is the affidavit of claimants. It is noted that work which is unquestionably laborer's work was performed when the digging, filling and backfilling was accomplished, under the direction of their own Foreman. While the affidavit alleges they assisted water service employes **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." (Emphasis ours.)

In conclusion, Carrier requests that this claim be denied as there has been no violation of the agreement as alleged.

OPINION OF BOARD: Claimant is a Signaller. The claim is that a Testman did work of a position of a lower classification within the Signallers' Collective Bargaining Agreement in which his position and the other are within the Scope Provision; and, his doing the said work violated the Agreement.

It stands, uncontroverted, that the Testman voluntarily—that is without assignment by, or knowledge of Carrier—did the work involved in the claim. Moreover the record indicates without challenge by petitioner that the work in question could have been performed by the regularly assigned maintainer who was also at the work location. Under the circumstances we find there has been no violation of the agreement and the claim will 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 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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of September 1964.