

Award No. 13017
Docket No. SG-12575

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

HUDSON & MANHATTAN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Hudson and Manhattan Railroad Company:

In behalf of Signal Repairman James Condon, with headquarters at Hudson Terminal, assigned hours 4:00 P.M. to 12:00 M.N., Monday through Friday, rest days Saturday and Sunday, for eight (8) hours at time and one-half rate account the Carrier requiring and permitting a Signal Instrument Repairman to perform construction work on the model switch layout mounted on the No. 3 station platform at Hudson Terminal on November 16, 1959. [Carrier's File: Time Claim No. 145.]

EMPLOYEES' STATEMENT OF FACTS: Mr. James Condon is regularly assigned to a position of Signal Repairman with headquarters at the Hudson Terminal. The assigned hours of Signal Repairman Condon's position are from 4:00 P.M. to 12:00 M.N., and the regular assigned work week is Monday through Friday, with rest days of Saturday and Sunday.

During the first part of 1959, the Carrier had its Maintenance of Way trackmen fully assemble a complete model switch layout including ties, running rails, stock rails, switch points, etc. at the south end of No. 3 passenger platform at the Hudson Terminal.

Some time subsequent to the completion of the track work on the switch layout, the Carrier instructed Signal Repairmen M. Hobby, Jr. and T. Connelly to perform the signal construction work of mounting and bolting an electro-pneumatic switch machine to the switch ties, in addition to installing all switch rods, lock rods, etc.

Some time later the Carrier decided to supplement the switch layout by the installation of a new switch circuit controller. This involved signal construction work to be performed as it was necessary to drill holes in the ties to fasten the switch box and install a switch circuit controller operating rod to the head rod. The installation of the switch circuit controller box further

did not allow the claim, but indicated that in spite of the technical violation involved the claim should be denied on the ground that the Organization had not shown that as a result of the violation any of its members had actually been deprived of compensation or suffered any loss. Furthermore, under no condition, is a claimant entitled to penalty pay for work which he has not performed. See Third Division awards 6586, 8664, 6702 and 7242.

It is true that the claimant is generally employed in the maintenance and repair of Hudson Terminal Switches and signals. However, this does not mean that he is entitled to reparation because a Signal Instrument Repairman headquartered at Hudson Terminal happens to work on equipment which is to be installed in Jersey City. The Organization has shown absolutely no violation of the existing agreement between the parties by reason of Carrier's use of a high graded and skilled employe as was required in the construction of the new type switch layout which was involved herein.

CONCLUSION

Carrier submits that the employe's claim is without merit and should be denied.

OPINION OF BOARD: Claimant was regularly employed on the 4:00 P. M. to 12:00 M. N. shift as a Signal Repairman at Carrier's Hudson Terminal. On November 16, 1959, F. Fawcett, a Signal Instrument Repairman, performed certain construction work on a typical switch layout of new design which was being set up on a station platform at Hudson Terminal for ultimate installation in Jersey City. Fawcett was employed on the 8:00 A. M. to 4:00 P. M. shift, and headquartered at Hudson Terminal. Fawcett has a higher graded position.

The controlling Agreement provisions are:

"Rule 3. Signal Instrument Repairman:

An employe who is regularly assigned to perform the work of inspecting, testing and repairing signal apparatus and appliances, shall be classified as Signal Instrument Repairman.

In addition to the above duties the Signal Instrument Repairman will be required to clear trouble in his assigned territory.

Rule 5. Signal Repairman:

An employe who is qualified and assigned to perform construction, repair, tests and maintenance within the Scope of this Agreement shall be classified as a Signal Repairman."

In conformity with Award No. 12626, we find that Rule 3 does not restrict the work assignable to a Signal Instrument Repairman in the manner presented by Petitioner. 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 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 Agreement 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 27th day of October 1964.