

**Award No. 13145**

**Docket No. SG-13245**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**John J. McGovern, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**SOUTHERN PACIFIC COMPANY  
(Pacific Lines)**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company that:

(a) The Southern Pacific Company violated the current Signalmen's Agreement effective April 1, 1947 (reprinted including revisions April 1, 1958), particularly the Scope Rule and Rule 70.

(b) Mr. E. E. Whitney be paid for twelve and one-half (12½) hours for March 2 and 3, 1961, a total of \$48.737 for time 7:00 P. M. March 2 to 7:30 A. M. March 3, 1961, and that Mr. T. J. Ritchie be paid eleven and one-half (11½) hours for March 2 and 3, 1961, a total of \$44.798 for time 8:00 P. M. March 2 to 7:30 A. M. March 3, 1961, account track department forces being used to flag crossing while the crossing protection was out of service.  
(Carrier's File: SIG 152-89; S-97-21-103)

**EMPLOYEES' STATEMENT OF FACTS:** This dispute is a result of the Carrier's action of assigning track forces instead of signal forces to flag a highway grade crossing during the time that automatic crossing protection devices that had been installed and maintained by signal forces were out of order and being repaired. The basic issue is whether or not signal forces have a contractual right to provide flag protection at a highway crossing after they had installed highway crossing protection devices and during such periods of time that such devices are temporarily out of service or being repaired by signal forces. The same issue is involved in this Division's Docket SG-12719.

It was our opinion that in order to avoid further burdening this tribunal the instant claim should have been held in abeyance and disposed of on the same basis this Board eventually disposes of SG-12719, but the Carrier would not agree to the General Chairman's suggestion in this respect.

as they do in this instance, they can hardly influence a decision going to the merit of this claim. Further, since those Maintenance of Way Track Sub-Department employees used as crossing flagmen on date involved, entitled to overtime pay, were compensated at the overtime rate of pay, General Chairman's argument that they were used "solely to keep from paying the higher rate to signal department employees" is not convincing, granted the Maintenance of Way Sub-Department employees used were compensated at a lower rate of pay.

Carrier asserts the handling evident in this Docket in providing flag protection was proper and conformed to a practice long in effect on the property; that the service giving rise to the dispute herein is not work coming within the Scope Rule of the current agreement; that both Maintenance of Way and Signal Department employees have been used for this service, depending upon the particular circumstances involved, and that the determination of which of those classes will be used is a prerogative reserved to management.

In the above situation, the principle enunciated in Award 8755 of this Board, denying the claim covered thereby, applies here. The following excerpt from this "Board's Opinion" in that case clearly reflects the analogy:

"Thus it appears that the work in question, not being exclusively allocated to the claimant in the scope section of the contract, and of a type performed by others in the past, is work which in the discretion of the Carrier may be awarded to either class. The discretion to be exercised in the public interest."

#### CONCLUSION:

Carrier requests that this claim be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** We find that this claim involves the same parties and question as that involved in Award No. 13143. Following our decision in that case, this claim will be 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 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 11th day of December 1964.