

Award No. 13210
Docket No. SG-13086

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

John J. McGovern, Referee

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 April 1, 1958 including revisions) particularly the Scope Rule and Rule 70.

(b) Mr. A. V. Kenoyer, G. L. Gowing, K. E. Killenbeck, R. W. Zenker, G. S. Phipps, H. L. Smith, C. R. Dishman, and H. W. Rothman, members of Signal Gang No. 8, be reimbursed at their respective rates of pay for their proportionate share of the time worked by members of the Water Service Department in dismantling the air line to switch machine at the east end of the yards at Dunsmuir, California, on July 25, 1960. [Carrier's File: SIG 152-83].

EMPLOYEES' STATEMENT OF FACTS: On or about July 25, 1960, the Carrier assigned other than signal employees to dismantle the air line to a switch at the east end of the yard at Dunsmuir, California. The employees who performed this work hold no seniority or other rights under the current Signalmen's Agreement. The air line had been used exclusively for the operation of the switch. The switch had been installed and maintained by employees classified in and covered by the Signalmen's Agreement. The switch was abandoned when engine storage facilities were moved to another location. The air line had been installed by other than signal forces, and a claim was filed on behalf of signal employees because of that. The Carrier did not deny that claim within the time limits, and paid the claim on default, thereby preventing it from being disposed of on the basis of its merit.

Immediately upon learning that employees not covered by the Signalmen's Agreement had been assigned to dismantle the air line to this abandoned switch, the Brotherhood's Local Chairman, Mr. R. P. Smick, presented a claim to the Carrier's Signal Supervisor, Mr. R. G. Hickerson. Supervisor Hickerson denied the claim and he was timely notified of the rejection of his decision. The claim was subsequently appealed to the Carrier's Superintendent, Mr. S. B. Burton, by the Local Chairman, and Mr. Burton also denied the claim.

"The Carrier maintains that signalmen have no exclusive claim to work on boilers and air compressors, i.e., work on the source of power for the car retarders back beyond the 'point of utilization'. This appears to us to be a sensible dividing line."

There can be no question that the dismantling of the air lines subject to this claim was work "* * * back beyond the 'point of utilization'", which in this case would be the air switch. There is no dispute in this Docket that other than Signal Department employees performed any service in connection with disconnecting the involved air lines from the air switch for which they had been used. There could be no dispute in that particular for the obvious reason that effective July 11, 1960, use of the air switch was discontinued and hand-operated switch substituted therefor and incident here involved did not occur until July 25, 1960. In addition to Award 8070, the Division's attention is directed to its Awards 8288 and 8291 which also support Carrier's position in this case.

In view of the foregoing, it is clear that the Scope Rule of the current agreement does not cover the work here claimed, and that being so, no other provision of that agreement, including Rule 70, can have application. It is a fact beyond dispute that the consistent practice on this property has been to assign Water Service Department employees to install and/or dismantle air lines from air compressors to the equipment for which air is used, whether it be car retarder installations, one-spot car repair facilities, air powered derails, air powered switches, or other installations. Conclusive evidence that such has been the case for at least 10 years will be found in Carrier's Exhibits "H", "I", "J", and "K".

The work here claimed is not reserved to Signalmen by agreement or other authority on this property; it is not now and has not been the practice for such work to be performed by Signalmen and Petitioner, in pursuing this and similar claims, is attempting to secure through an Award of this Division a new rule over the above that agreed to by the parties. The principle is well-established that it is not the function of this Board to modify an existing rule or supply a new rule where none exists.

CONCLUSION: Carrier requests that the claim be denied.

(Exhibits not reproduced).

OPINION OF BOARD: Carrier's Engine storage facilities were moved to the lower yard at Dunsmuir in the latter part of June and effective July 11, 1960, use of air switch at east end of the yard was discontinued in favor of a hand operated switch. Two Water Service Department employees were used on July 25, 1960, removing air line from where air switch had been located to a point where it was extended from another air line leading to air compressors in the old back shop building across the tracks from the depot. Last mentioned air line was not removed. The pipe in question was salvaged so that it would be available to Carrier's Water Service Department. The air compressors which furnished air for the air switch were originally installed for use in connection with steam heat plant boilers and were subsequently used, in addition thereto, to supply air for various equipment.

Under the facts and circumstances cited, we find the claim to be in substance the same as those disposed of in Awards Nos. 8172, 12023, and 12800. The claim is, therefore, 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 the 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 13th day of January 1965.