

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 and continues to violate the current Signalmen's Agreement, effective April 1, 1947 (reprinted including revisions April 1, 1958) particularly the Scope Rule when it failed and/or declined, and continues to fail to comply with the Scope Rule of the Agreement, in not assigning recognized signal work to the employees of the Signal Department, on June 11, 12, 18, 19, 25, 26, 1960, July 2, 3, 4, 9, 10, 16, 17, 23, 24, 30, 31, 1960 and August 6 and 7, 1960. Such work being the work of maintaining the air compressors at Eugene Yard which was installed and is used for the operation of the retarder yard at Eugene, Oregon. This work has been performed by employees of the Electrical and Water Service Departments. This claim is a continuing claim for the length of time the carrier violates and continues to violate the current Signalmen's Agreement by allowing employees not covered by this agreement to do the above mentioned work.

(b) Mr. W. E. Hill be allowed Two (2) Hours and Forty (40) Minutes (Call) at the overtime rate of Coderman for each of the before-mentioned dates and for each assigned rest day or Holiday for the length of time the Carrier continues to violate the agreement. [Carrier's File: SIG 152-79].

EMPLOYEES' STATEMENT OF FACTS: Beginning on or about May 16, 1956, the Carrier assigned its Water Service Department employees to install air compressors and air lines that were to be used exclusively for the operation of a new car retarder system at Eugene, Oregon. Upon learning that employees, not covered by the Signalmen's Agreement, were installing part of a car retarder system, the Local Chairman filed a claim for compensation on behalf of signal employees because the Scope of the Signalmen's Agreement specifically covers the construction, reconstruction, installation, maintenance, testing inspecting and repair of car retarder systems. That claim was progressed up to and including the Third Division of the National Adjustment Board, where it was assigned Docket No. SG-9805.

The Carrier subsequently assigned its Water Service Department and Electrical Department to employ one man each for approximately one hour

the position taken by Petitioner. It has been settled on this property by the abandoned claims in evidence as Carrier's Exhibits "J" and "K" respectively and it has been settled as a general proposition in Award 8070. The pertinent portion of Award 8070 which pin points the issue here in dispute, is as follows:

"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 installation and maintenance of air compressors involved in this case was "work on the source of power for the car retarders back beyond the point of utilization". In addition to Award 8070, the Divisions' 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, other provisions of the current agreement can have no application.

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 and 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.

Insofar as the claim for overtime rate is concerned, if there were any basis for claim submitted, which Carrier denies, nevertheless the contractual right to perform work is not the equivalent of work performed. That principle is well established by a long line of awards of this Division, some of the latest being 6750, 6854, 6873, 6875, 6974, 6978, 6998, 7030, 7062, 7094, 7100, 7105, 7110, 7138, 7222, 7239, 7242, 7288, 7293, 7316, 9748 and 9749.

CONCLUSION

Carrier requests that the claim be denied.

(Exhibits not reproduced).

OPINION OF BOARD: Award 10730, adopted August 3, 1962, adjudicated a claim that certain Signalmen of this Carrier be "allowed an adjustment in pay for an amount of time * * * equal to that required by an employee not covered by the Signalmen's Agreement to perform the work of installing, repairing and maintaining the air compressors and air line" of the car retarder system at Eugene, Oregon "since May 16, 1956." We ruled that the involved work was reserved exclusively to the Signalmen by their Agreement with Carrier, we allowed nominal damages to part of the named Claimants and denied any payment to the other Claimants. We further noted that:

"It is our final thought that if our nominal compensatory award does not have the intended deterrent effect to new violations, subsequent awards which depend on this and earlier authority may adjust the dispute differently." (Emphasis ours.)

The Claimant in this docket is a Signalman who was not named as a Claimant in Award 10730, but who now seeks an allowance for time spent subsequent to May 16, 1956, and prior to the adoption of Award 10730 by an employe not covered by the Signalmens' Agreement in doing maintenance and repair work on the same air compressor and air line. Award 10730 disposed of the issues presented and this claim must be dismissed.

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 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 Award 10730 disposed of the issues presented.

AWARD

Claim dismissed.

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.