

Award No. 13213

Docket No. SG-12807

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) when it failed and/or declined to apply the Scope Rule or other provisions of the Agreement, in not assigning recognized signal work to employees of the Signal Department on March 26, 27, April 2, 3, 9, 10, 16, 17, 23, 24, 30, May 1, 7, 8, 14, 15, 21 and 22, 1960. Such work being the work performed by employees of Water Service and Electrical Departments in the maintenance of air compressors for the operation of the retarder yard at Eugene, Oregon.

(b) Mr. W. Barber be allowed two (2) hours and forty (40) minutes at the overtime rate of Signal Maintainer, Centralized Traffic Control area, for each of the before mentioned dates as these were regular rest days of Mr. Barber's assigned position. [Carrier's file: SIG 152-76].

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 Railroad 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 each day in maintenance of the air compressors. Inasmuch as the air compressors were being used exclusively for the operation of the car retarder system, the Local Chairman filed claims on behalf of signal employees covered

In 1956, Petitioner initiated on this property claim on behalf of Signal Department employees which in all essential particulars is the same as that contained in this Docket and, likewise involves the car retarder installation at Eugene. That claim has been docketed by this Division as SG-9805, and to this time no award has been made thereon.

In that case, as it is in this Docket, it was Carrier's position that air compressors which are the source of power for the involved car retarder installation are not an integral part of that installation. In Carrier's view, that is the controlling issue in his case and it has already been settled against 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 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 similiar 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 employe 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 Signalmen's 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 this dispute involved herein; and

That Awards 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.