Award Number 13348
Docket No. SG-13326

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ross Hutchins, 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, when, on February 21, 1961, it assigned or otherwise diverted work generally recognized as signal work to a person not covered by the Signalmen's Agreement by using said person to operate a truck in which signal equipment was being transported from a local storage point to a point of installation, and also by using said person in transferring the equipment from one truck to another.

(b)Mr. J. F. Lindsay be allowed two (2) hours and fifty-five (55) minutes at his time and one-half rate of pay from 3:50 P. M. to 6:45 P. M. February 21, 1961, when person not covered by the Signalmen's Agreement was used to operate the truck in which signal equipment was hauled between El Paso, Texas and Valmont, New Mexico, and in transferring the equipment from one truck to another at Valmont. (Carrier's File: SIG 152-91; S-97-21-101)

EMPLOYES' STATEMENT OF FACTS: On February 21, 1961, at about 3:30 P. M. an improper train movement at Tucumcari, New Mexico, damaged a spring switch machine to the extent that its replacement was necessary. As replacement spring switch machines are stored at the Signal Shop in El Paso, Texas, it was necessary to secure a replacement machine from this point.

On receiving word of the damaged switch machine, the Signal Supervisor at El Paso immediately dispatched a replacement machine eastward toward Tucumcari by truck and assigned the Assistant Signal Supervisor at El Paso, who is not covered by the Signalmen's Agreement, to operate the truck. The Signal Supervisor simultaneously instructed the Assistant Signal Supervisor in Carrizozo, New Mexico, to proceed westward by truck from Carrizozo to effect a meeting with the truck from El Paso, transfer the switch machine from the El Paso truck to the Carrizozo truck, and transport it to Tucumcari. The

all handling of spring switch machine, including transfer of the machine from one truck to another at Valmont and the unloading of the machine at Tucumcari. Also, switch machine was loaded on truck by Signal Department employes at Signal Shop in El Paso.

It is noted that the "Statement of Claim as asserted by Petitioner is misleading and, whether from ignorance of the facts or otherwise, implies a circumstance which is far from true. Attention is directed to that portion of paragraph (a) of the Statement of Claim reading:

> " . . . which signal equipment was being transported from a local storage point to point of installation . . . " (Emphasis added)

The transporting of a piece of signal equipment, as was done in this case, from El Paso, Texas, to Tucumcari, New Mexico, a distance of 330 miles, could hardly, by the most generous interpretation, be considered a "local" operation as the term "local" is commonly understood and used. That Petitioner is not unaware of that fact is evidenced by the fact that while the within claim in favor of Claimant Lindsay is for that portion of the trip from El Paso, Texas, to Valmont, New Mexico, a companion claim for that portion of the trip between Carrizozo and Santa Rosa, New Mexico, has also been appealed to this Division by Petitioner in this case (File NRAB-1184-Sou. Pac.) in favor of Signalman J. A. Buie, headquarters Carrizozo.

Were Petitioner's position in this case to prevail, conceivably it would not be possible for Carrier to move a piece of signal equipment by truck between any points on its lines, unless that truck was driven by an employe covered by the current agreement, without incurring a penalty on every district through which the truck had to pass.

With reference to Rule 70, cited in support of this claim, for that rule to become operative, it must first be shown that there has been a violation or misapplicatiopn of any portion of the current agreement. This has not been, nor can it be, done.

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 6019, 6562, 6750, 6854, 6875, 6974, 6978, 6998, 7030, 7094, 7100, 7105, 7110, 7138, 7222, 7239, 7242, 7288, 7293, 7316, 8114, 8115, 8531, 8533, 8534, 8568, 8766, 8771, 8776, 9748, and 9749.

CONCLUSION

The claim in this docket is entirely lacking in merit or agreement support and Carrier requests that it be denied. (Exhibits not reproduced)

OPINION OF BOARD: The Opinion of this Board in Award 13347 covers all the issues of this docket.

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 a violation of the Agreement has not been shown.

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AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1965.