

Award No. 13528

Docket No. SG-11845

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Wabash Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement, effective September 1, 1944, as amended, particularly the Scope, when, from 7:30 A. M. until 2:30 P. M. (minus a one-hour meal period) on October 28, 1958, employees of Communication Gang under Foreman Chambers were required to perform signal work in connection with the installation of signal control line wires from Mile Post 2 to Walbridge Interlocker.

(b) The Carrier now compensate Messrs. N. E. Beeson, D. D. Hedrick, T. W. McVay and Hilton Hedrick for six (6) hours at their respective straight-time rates of pay because of this violation. [Carrier's File: 116.5]

EMPLOYEES' STATEMENT OF FACTS: In the vicinity of Toledo, Ohio, this Carrier utilizes the same pole line for its signal and communication circuits. Signal employees covered by the Signalmen's Agreement perform all of the work in connection with signal circuits and communication employees, not covered by the Signalmen's Agreement, perform work in connection with communication circuits. Signal and communication employees do work together at times, but they are covered by different agreements and are expected to perform only that work which is covered by their respective agreements.

On the date involved in this dispute, October 28, 1958, the claimants in this dispute were employees of a signal gang under the direction of Foreman Waldo Throne. Also working in the same area was a communication gang under the direction of Foreman William Chambers.

On October 28, 1958, from 7:30 A. M. until 2:30 P. M., except for a one-hour meal period, the communication gang employees assisted the signal gang in installing two signal control wires from Mile Post #2 to Walbridge Interlocking near Toledo, Ohio.

Under date of October 28, 1958, Signalmen N. E. Beeson and D. D. Hedrick, Assistant Signalman T. W. McVay, and Signal Helper Hilton Hedrick submitted a Form 120, DAILY TIME SLIP, each claiming six (6) hours additional compensation at their respective straight time rates of pay on the basis communication gang employees were required by the Carrier to perform work that is covered by the Scope of the Signalmen's Agreement.

“(b) The Carrier now compensate Messrs. N. E. Beeson, D. D. Hedrick, T. W. McVay and Hilton Hedrick for six (6) hours at their respective straight-time rates of pay because of this violation.”

The request therein made is for payment of time in addition to that which they actually earned. Not only does no rule in the signalmen's agreement provide for such payment but Signal Helper Hilton Hedrick, not being qualified to climb poles, also was not qualified to string the signal wire on poles—work the linemen performed on October 28, 1958, which it is contended was in violation of the signalmen's agreement. In support thereof, attention is directed to the fact that on the date in question Signal Helper Hilton Hedrick was working on the ground putting up wire on short poles with the use of a lay-up stick.

Also, while this claim is presented in favor of Signalmen Beeson and D. D. Hedrick and Assistant Signalman McVay for six (6) hours at straight time in addition to that which they actually earned based on a contention that “employees of Communication Gang under Foreman Chambers were required to perform signal work in connection with the installation of signal control line wires” as stated in the Employees' ex parte Statement of Claim, the performance of that work did not deprive Signalmen Beeson and D. D. Hedrick and Assistant Signalman McVay of any work, as on the date in question they were also engaged in installing the two (2) signal wires between Walbridge Jct. and the new signal location at the west end of Toledo Yard, Signalman Beeson and Assistant Signalman McVay climbing up poles, laying up and tying in the wires, and Signalman D. D. Hedrick sighting in and leveling the wires, for which work they were each allowed eight (8) hours at straight time.

It is pertinent to point out that although claim is presented on behalf of Signal Gang employees Beeson, D. D. Hedrick, McVay and Hilton Hedrick for six (6) hours additional time due to the communication gang employees assisting them to install signal wires, those employees assisted the linemen in replacing communication wires just a few days prior to the claim date or gave assistance to the linemen during the course of their close association with those employees on the Toledo signal project due to both signal and communication wires being involved, in the same manner as the linemen gave assistance to the claimant signalmen by reason of which claim is now made for an additional allowance on their behalf.

The alleged claims presented in the Committee's ex parte Statement of Claim for six (6) hours at straight time in addition to the allowances already made to the claimants for the work performed on October 28, 1958, is without support under the rules of the agreement and should be dismissed, and if not dismissed, then denied.

(Exhibits not reproduced).

FINDINGS: The Third Division of the Adjustment Board finds:

That the dispute was certified to the Third Division of the Adjustment Board ex parte by the complainant party and that hearing thereon was held.

The dispute involved herein was referred to the National Disputes Committee established by Memorandum Agreement dated May 31, 1963, to decide disputes involving interpretation or application of certain stated provisions of specified National Nonoperating Employee Agreements. On March 17, 1965,

that Committee rendered the following Findings and Decision (NDC Decision 3):

"FINDINGS: Paragraph 1(a) and 1(b) of Article V of the (ART. V) August 21, 1954 Agreement provides that—

'(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. * * *

'(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, * * * '.

"Although the employees assert that the claim was dated and presented October 28, 1958, the carrier contends that it did not receive the claim until November 10, 1958. The claim was denied by the Superintendent, Signal and Communications, December 30, 1958. This was followed by conference held February 28, 1959. The matter of extending the time limit for appealing the Superintendent's denial was not given any handling. The first appeal was made March 16, 1959.

"The Railroad took the position during handling on the property that the claim is barred by Article V because it was not appealed within 60 days from receipt of the Superintendent's disallowance, and adheres to that position.

"The employees assert that the Railroad first violated Article V in that the Superintendent's decision was not rendered within 60 days of the date the claim was presented, but that inasmuch as they handled the claim on the merits up to the Vice President and General Manager the claim should be decided on the merits. This assertion was first raised by the employees before the Third Division.

"The National Disputes Committee rules that the employees waived any contention that the Railroad did not comply with Article V by their failure to make such contention during handling on the property. As to the failure of the employees to appeal within 60 days from receipt of the Superintendent's disallowance, the Committee rules there was no extension of time for such appeal, and that it was not taken within the time limit.

"DECISION: The claim is barred by Article V of the August 21, 1954 Agreement.

"This decision disposes of this case. The docket is returned to the Third Division, N.R.A.B., for disposition in accordance with Paragraph 8 of the Memorandum Agreement of May 31, 1963."

The above-quoted Findings and Decision dispose of all issues involved in the dispute and the docket, therefore, will be dismissed.

AWARD

Docket dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1965.