

Award No. 13529

Docket No. SG-12048

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ALTON AND SOUTHERN RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Alton and Southern Railroad that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when it required a Maintenance of Way employe, who holds no seniority or other rights under the Signalmen's Agreement, to perform generally recognized signal work of oiling signal equipment (pipe-connected derails) on April 21, 24, 29, May 6, 15, 22, 29, June 5, and 12, 1959.

(b) The Carrier violated Article V of the August 21, 1954 Agreement when the Local Chairman's appeal of July 30, 1959, was not denied until October 13, 1959.

(c) The Carrier should now be required to compensate Mr. Leland C. Goldschmidt for two hours and forty minutes at the Assistant Signalman rate of pay (\$2.44 per hour) for each day listed in paragraph (a) above.

EMPLOYEES' STATEMENT OF FACTS: As shown by the Statement of Claim, this dispute involves a Maintenance of Way employe oiling pipe-connected derails. A derail is a safety device applied to a track for the purpose of deflecting railway rolling stock from the rails at a chosen point in order to prevent collisions or other accidents. A pipe-connected derail is one that is connected to the switch by a pipe line so that when a Switchman or other employe throws the switch the derail will move at the same time.

According to our records, the Carrier's signal employes installed the first pipe-connected derail in September, 1951. Since that time they have installed other derails of this type and have maintained, adjusted, repaired, cleaned and oiled them. In signaled territory, this equipment must be kept in proper adjustment and repair or the signals will be adversely affected.

The claimant in this dispute, Mr. Leland C. Goldschmidt, is a top rate Assistant Signalman working with the assigned Signal Maintainer patrolling and maintaining telephone, electrical, and signal apparatus and their appurtenances on the Alton and Southern Railroad. Prior to the time this dispute arose, the oiling of pipe-connected derail installations was usually performed by Mr. Goldschmidt, with or without the immediate supervision of the Signal Maintainer. However, the oiling of these derails has been done by other signal employes on periodic maintenance checks.

Some time during April, 1959, Mr. Charles Suyo, Signal Supervisor, sup-

of the Carrier of the rejection of his decision] and therefore, there was a failure to properly present this [appeal] and the Carrier may raise that issue at any time."

If the carrier had given its decision within the 60-day time limit, there would be no question what your Board's decision in this case will be. It was settled in Awards No. 8564, with Referee Harold M. Weston, and No. 8797, with Referee Carroll R. Daugherty, that the petitioner must comply fully with Section 1(b) of Article V. The reasonable adaptations suggested above fairly set out the correct interpretation of Article V as applied to the present case. The carrier urges your Board to rule in some like language, denying this claim.

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 waived.

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 7) :

"**FINDINGS:** (ART. V) Paragraphs 1(b) and 1(c) of Article V of the August 21, 1954 Agreement provide that:

'(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, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed * * * .

'(c) The requirements outlined in Paragraphs (a) and (b), pertaining to appeal by the employe and decision by the Carrier, shall govern in appeals taken to each succeeding officer. * * * '

"The claims which Mr. Goldschmidt had submitted were disallowed by the Signal Supervisor. Mr. Goldschmidt appealed the Signal Supervisor's decisions to the Signal and Communications Engineer, after having rejected them in letter of June 30, 1959, to the Signal Supervisor.

"The Signal and Communications Engineer denied the appeal in letter of July 22, 1959. Mr. Goldschmidt appealed the denial to the Assistant General Manager in letter of July 30, but did not notify the Signal and Communications Engineer in writing of the rejection of his decision. At Mr. Goldschmidt's request, the Assistant General Manager held conference with him August 18th on the claims, at which the Signal and Communications Engineer was present. The Assistant General Manager denied the appeal in letter of October 13th.

"Mr. Goldschmidt (who had been designated temporary local

chairman) replied to the Assistant General Manager on October 20th asserting that the railroad was obligated under paragraph 1(a) of Article V of the August 21, 1954 Agreement to allow the claims as presented inasmuch as the Assistant General Manager's denial was not within 60 days of the date of appeal. The Assistant General Manager replied, stating that Mr. Goldschmidt had earlier failed to comply with Article V inasmuch as he had not notified the Signal and Communications Engineer in writing of the rejection of his decision.

"The National Disputes Committee rules that inasmuch as the Signal and Communications Engineer was not notified in writing of the rejection of his decision the claims are barred.

"DECISION: The claims are barred under 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.