

Award No. 13692

Docket No. SG-13523

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Kieran P. O'Gallagher, 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, Rules 13, 15, 16 and 70. Also Rule 1942 of the Rules and Regulations for Maintenance of Way and Structures, the Company Book of Rules.

(b) Mr. George Brautlacht be paid six (6) hours at his time and one-half rate of pay, which is the time it would take him to drive from Dorris, California, to Alturas, California, to make the proper tests of the apparatus, and return to Dorris, for May 27, 1961. [Carrier's File: SIG 152-100]

EMPLOYEES' STATEMENT OF FACTS: At the time this dispute arose, Claimant Brautlacht was the Signal Maintainer at Dorris, California. On May 27, 1961, one of Claimant's assigned rest days, a train struck an automobile at crossing 458.4 in Alturas, California, which is on Claimant's signal maintenance territory. One or more Carrier officials not covered by or classified in the current Signalmen's Agreement tested the crossing signals and reported they were functioning. Claimant was at home and available but the Carrier made no attempt to call him to perform the signal work of testing the crossing signals at the crossing where the accident occurred.

Inasmuch as Rule 16 of the current Signalmen's Agreement provides that the regular assigned employees shall be called, unless registered absent, the Local Chairman filed a claim on behalf of Signal Maintainer Brautlacht for time and one-half pay for six (6) hours, the amount of time that would have been required for him to drive from Dorris to Alturas, make the proper tests on the crossing signal installation, and return to Dorris. The Local Chairman's original claim, presented to the Carrier's Superintendent on June 7, 1961, is Brotherhood's Exhibit No. 1, and the Superintendent's denial of July 7, 1961, is Brotherhood's Exhibit No. 2. On July 22, 1961, the Local Chairman notified the Superintendent of the rejection of his decision, then referred this matter to the General Chairman.

Under date of July 26, 1961, the General Chairman presented an appeal (Brotherhood's Exhibit No. 3) to the Carrier's Assistant Manager of Per-

In Award 7059, this Division held:

"Carrier has one painter assigned at Waterloo, Iowa, who is carried on the payroll of the B&B Supervisor at that point. The Organization contends that the agreement is violated in that there is no painter foreman at this point and that the work of a painter foreman is being performed by the Bridge and Building Supervisor. The Organization requests that Carrier be required to assign a painter foreman at Waterloo.

"It is plain from the record that the B&B Supervisor designates the work to be done by the painter, but he does not instruct the painter or direct him in the details of the work. Under these circumstances, the B&B Supervisor is not doing the work of a painter foreman. We point out also that the agreement does not require the assignment of a foreman. The need of supervision, in the absence of agreement provisions to the contrary is a matter within the prerogatives of management. Awards 4235, 4992, 6114, 6699. It appearing that Carrier does not deem the assignment of a foreman necessary and there being no employe wrongfully performing the duties of a foreman, there is no basis for an affirmative award."

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

Carrier asserts claim is completely void of merit and respectfully requests this Division to deny same.

(Exhibits not reproduced).

OPINION OF BOARD: The Organization contends that one or more of the Carrier's officials not covered by or classified in the current agreement tested the crossing signals at Mile Post 458.4 at Alturas, California, subsequent to a train—automobile collision at the crossing at that point, and avers that such testing is the exclusive function of the Claimant, Signal Maintainer Brautlacht. The Organization contends that the said Signal Maintainer should have been called from his home at Doris, Calofirnia, to test the signals.

The record reveals that the train-automobile collision occurred between 12:00 Noon and 1:00 P. M. on Saturday, May 27, 1960; that the Carrier's Road Foreman of engines was notified concerning the accident and upon arrival at the scene found that the train had moved out of the crossing signal circuit, but that witnesses to the accident, both employes and non-employes had advised him the crossing signals were operating at the time of the accident.

The record further reveals that the Roadmaster of the Carrier arrived on the scene of the accident at about 3:00 P. M. on the date involved, at which time the train involved in the accident had departed. There is no evidence whatsoever that anyone on the Carrier's behalf had tested the operation of the signals.

We can find nothing in the current agreement requiring the Carrier to call a Signal Maintainer to make an inspection or a test of crossing signals if in the judgment of supervisory forces such inspection or tests are unnecessary. The evidence here indicates the supervisory forces deemed it unnecessary to call the Claimant, and in the circumstances we must deny the claim.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1965.