

Award No. 13795
Docket No. SG-13893

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Company violated the agreement on September 1 to September 10, inclusive, 1960, by assigning duties of the T&S Inspector, described in Article I, Section 1 of the BofRS Agreement, to Office Engineer W. E. Bergen of the Regional C&S Engineer's Office, Cincinnati, Ohio. During the layoff due to the T.W.U. strike, Office Engineer W. E. Bergen inspected T&S facilities and equipment from Cincinnati, Ohio, to Richmond, Indiana, and from Cincinnati, Ohio, to Xenia, Ohio.

(b) W. Abner be paid for September 1, 2 and 3, 1960, as Relief Inspector, and Wm. Bath be paid for September 6, 7, 8, 9 and 10, 1960, at Inspector's rate for the above violation.

[System Docket 250 - Buckeye Region Case Z-64]

EMPLOYEES' STATEMENT OF FACTS: This dispute involves the agreement between the Pennsylvania Railroad Company, Baltimore and Eastern Railroad Company and Telegraph and Signal Department Employees represented by this Brotherhood (rules effective June 1, 1943, except as otherwise specified, rates effective September 1, 1949, except as otherwise specified). By reference thereto, that agreement, as amended, is hereby made a part of the record in this dispute. For the sake of brevity, that agreement will be referred to herein as the Signalmen's Agreement, employees classified therein will be referred to as signal employees, work covered thereby will be referred to as signal work, and the Pennsylvania Railroad Company will be referred to as the Carrier.

As a matter of information, Telegraph and Signal (T&S) Department is synonymous with Communications and Signal (C&S) Department.

Carrier's Maintenance of Equipment Department employees represented by the Transport Workers Union (TWU) were on strike from September 1

preventing or detecting vandalism, theft, or damage to Carrier's installations on the territory involved. The record also reveals that any irregularities discovered by the supervisor during his patrolling of the territory, were reported to the Inspector of the territory involved after the strike had terminated.

In view of the foregoing, Carrier submits it has shown that no supervisory employe performed any work accruing exclusively to Inspectors. Therefore, no Rules Agreement violation occurred during the period in question, and the instant claim is clearly without merit.

For the foregoing reasons, the Carrier submits that there is no valid basis upon which the Employes can establish their claim under the applicable Agreements, and the claim, therefore, should be denied.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To Said Agreements And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act, to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, Subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that the Rules Agreement was not violated.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: This case involves the same parties, issue and Agreement as Award No. 13794. For reasons stated in that Award, we will sustain the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier violated the Agreement.

Claim sustained.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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

**CARRIER MEMBERS' DISSENT TO AWARD 13795,
DOCKET SG-13893 (Referee Dorsey)**

We dissent for all the reasons listed in Award 13794. In addition, the statement submitted by the Office Engineer in this case clearly reflects the casual nature of the inspection work which they performed. The only exception to this was changing a burned out bulb, and this is clearly not work belonging exclusively to Signalmen. Awards 2932 and 6220.

We dissent.

W. F. Euker
R. A. DeRossett
C. H. Manoogian
G. L. Naylor
W. M. Roberts