

Award No. 13951

Docket No. SG-13801

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, 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 and is continuing to violate Article 1, Section 2 (a); Article 1, Section 4; and Article 2, Section 10 (a) of the current agreement, when, on the following dates and places, they assigned the Assistant Signalman to work with the Leading Maintainer: May 18, 22, 23, 24, 25, 26, 29, and 31, at Lemoyne, Pa.; June 1, 2, 5, and 6, at Lemoyne, Pa.; June 7, 13, 15, 19, 21, 22, 23, 26, 27, 28, 29, and 30 at Lancaster, Pa.; July 3, 6, 10, and 12 at Lancaster, Pa.; plus 10.6 hours overtime at the time and one-half rate.

(b) Assistant Signalman R. H. Lebo be paid the difference between the Maintainer's rate of pay and that of Assistant Signalman on the dates and for the overtime listed in claim (a).

[Carrier's File: System Docket 307—Philadelphia Region Case #16588]

EMPLOYES' STATEMENT OF FACTS: This dispute arose as a result of the Carrier assigning an Assistant Signalman to work with and under the direction of a Leading Maintainer on various duties, as outlined in our Statement of Claim.

Attached as Brotherhood's Exhibit No. 1, is copy of the Bulletin advertising one of the Leading Maintainer's position involved and a copy of the Bulletin awarding the position.

In view of the obvious violation, Local Chairman Ross S. Morris filed a claim in behalf of Assistant Signalman R. H. Lebo for the difference in Assistant Signalman and Maintainer rates of pay for all days that the Assistant was required to work with and under the direction of a Leading Maintainer. The initial claim is dated July 17, 1961, and is attached hereto as Brotherhood's Exhibit No. 2.

Supervisor C&S J. M. Shultzabarger denied the claim in a letter dated August 11, 1961, attached hereto as Brotherhood's Exhibit No. 3.

Under date of September 6, 1961, Local Chairman Morris appealed the Supervisor's decision to Superintendent-Personnel H. W. Manning and asked that the claim be docketed for discussion at their September 13, 1961 meeting. A copy of the appeal was furnished the Supervisor C&S with a footnote advising him that his decision was declined. The Superintendent-Personnel denied the claim in a letter dated September 22, 1961, which is attached hereto as

Award 6359—Referee McMahon

"We must hold that the burden of proof is on the one who asserts the claim. Mere words that a violation has occurred are not sufficient without positive evidence to substantiate the allegation as made."

Award 7793—Referee Smith

"Prior awards of this Division have held without exception that the burden of proof rests upon those presenting a claim."

Inasmuch as the Employees have failed to prove a violation of the Articles of Agreement and the Carrier has proven there was no violation of the Agreement, the Carrier respectfully submits that the claim lacks the necessary merit to warrant a sustaining award. Therefore, it should be denied.

In view of all the foregoing, the Carrier respectfully submits that the Agreement was not violated and, in any event the Claimant is not entitled to the compensation which he claims.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement 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 interpretations 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 thereto. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties 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 such action.

CONCLUSION

The Carrier has shown that no rule of the applicable Agreement supports the claim of the Employees and no violation of said Rules Agreement could possibly have occurred.

Therefore, your Honorable Board is respectfully requested to deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: Under the Board's Opinion and Findings in Award 13950, this claim will also be denied.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schultz
Executive Secretary

Dated at Chicago, Illinois, this 5th day of November, 1965.