

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Harr, 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) when it failed and/or declined to apply the Scope, Classification, Hours of Service, Call, Bulletin, Assignment, Promotion and Seniority Rules, or other provisions of the agreement, by failing to assign recognized signal work to employes of the Signal Department for fifteen days prior to January 5, 1962.

(b) Messrs. L. W. Clark and W. R. Hoffart be paid one hundred twenty (120) hours at the straight time rate of Signalman—and S. D. Dodd, K. W. Uphoff, D. R. Lee, M. M. Carpenter, and J. L. Garin be paid one hundred twenty (120) hours at the straight time rate of Assistant Signalman for fifteen days prior to January 5, 1962. [Carrier's File: SIG 152-118]

EMPLOYES' STATEMENT OF FACTS: The Claimants involved herein are furloughed Signal Department employes classified in and covered by the current Signalmen's Agreement.

The claim is due to the Carrier's action of assigning other than signal employes to install electric switch heaters (for melting ice and snow) at Crescent Lake, Oregon, and is based on our contentions (1) that it has been the practice in the past for signal employes to be used to install and maintain all automatic type switch heaters (except for a hot water type heater that resulted in Docket SG-11917, and one about which the Local Chairman did not learn in time to file a claim within the time limits, though he did file a protest—the General Chairman referred to the latter in his appeal of April 3, 1962, which is attached hereto as Brotherhood's Exhibit No. 6), and (2) that such work is generally recognized as signal work and covered by the Scope of the Signalmen's Agreement.

"On January 5, 1962 the electrical department of the Southern Pacific Co. placed eighteen switch heater units in service on yard tracks at Crescent Lake, Oregon. In installing these electric switch heaters there were two Journeymen electricians, and four electricians helpers and one apprentice electrician used to perform the work. Since it has been the practice in the past that signal department employes be used in the installation and maintenance of all automatic type switch heaters, we are asking that this claim be paid."

Carrier's Superintendent knew of no cases where signalmen have installed and maintained electric switch heaters; and on March 8, 1962 (see Carrier's Exhibit "C"), requested the local chairman to advise which point or points he had reference to and whether Claimants were licensed to make electrical installations in the State of Oregon. Since the local chairman had not replied to the above-mentioned letter of March 8, 1962, or furnished information in support of the claim presented, Carrier's Superintendent denied the claim on March 26, 1962 (Carrier's Exhibit "D"), for the following reason:

"Since you have not replied to our inquiry as to the points to which you have reference, where signal employes allegedly installed and maintained electric switch heaters, and as we know of no such work having been performed by the Signal Department at any point on the system, the claim presented is without any agreement support and is declined."

Thereafter, on March 31, 1962 (see Carrier's Exhibit "E"), Petitioner's local chairman acknowledged receipt of the Superintendent's letter of March 8, 1962, but neglected to furnish the information requested, and, in so doing, did not deny that signalmen had not installed and maintained electric switch heaters and that Claimants were not licensed to make electrical installations in the State of Oregon.

By letter dated April 1, 1962 (see Carrier's Exhibit "F"), Petitioner's local chairman notified the Superintendent that the claim was being appealed to the General Chairman and, in so doing, ignored completely the above-quoted reason given for Superintendent's denial of the claim.

On April 3, 1962, Superintendent received returned copy of his letter dated March 26, 1962, bearing local chairman's signature and date "4-1-62" in the spaces provided for thereon.

By letter dated April 3, 1962 (see Carrier's Exhibit "G"), Petitioner's General Chairman appealed claim to Carrier's Assistant Manager of Personnel, and by letter dated June 1, 1962 (see Carrier's Exhibit "H"), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim is that Carrier ". . . violated the current Signalmen's Agreement . . . by failing to assign recognized signal work to employes of the Signal Department . . ." The work involved is the installation of electric switch heaters by Carrier's Maintenance of Way Electricians.

The ultimate issue in this case is whether the work involved is ". . . generally recognized as signal work." This Board has consistently held that

the Employees cannot establish an exclusive right to work that is not expressly reserved to them by the terms of their Agreement without affirmatively proving that the specific work involved has been performed by them during a controlling period in the past. See Awards 13347 (Hutchins), 11799, 11800, 11801, 12073 (Dolnick), 13336 (Dorsey), and 13691 (O'Gallagher).

Award 13651 (Engelstein) involved the same parties and arose from the installation of an automatic switch heater by Maintenance of Way employes. In this award we stated:

"The record contains numerous assertions and counter-assertions but lacks evidence to support them. Without sufficient evidence upon which to base a determination of the issue, the claim is dismissed."

In the instant case we have the same situation as was involved in Award 13651. The employes have made assertions but offered no probative evidence to support their claim to the work involved. For these reasons we will dismiss 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 Employees involved in this dispute are respectively Carrier and Employees 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 Claim should be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1966.