

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

John J. McGovern, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF RAILROAD SIGNALMEN****ATLANTIC COAST LINE RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atlantic Coast Line Railroad Company that:

(a) The Agreement was violated when, on October 11, 1965, while the Signal Maintainer and Assistant Signal Maintainer were on their lunch period, Roadway Forces — not covered by the Agreement — performed the signal work of removing all bolts from Style "C" rail braces and nuts from bolts which hold a switch machine to ties at South Elm City, North Carolina.

(b) Signal Maintainer A. M. Ezzell and Assistant Signal Maintainer S. F. Bass be paid at their respective overtime rates for two (2) hours and forty (40) minutes because of Roadway Forces performing signal work on October 11, 1965.

EMPLOYEES' STATEMENT OF FACTS: This claim is concerned with the diversion of Scope Work and the performance of such work by persons not covered by the effective Signalmen's Agreement. On October 11, 1965, at South Elm City, North Carolina, Roadway Forces performed items of Signal Work including the removal of all bolts from Style "C" rail braces and nuts from the bolts which anchored a switch machine to ties in the track.

The work was performed while regularly assigned Signal Maintainer A. M. Ezzell and Assistant Signal Maintainer S. F. Bass were at lunch and away from the immediate job site.

As a result, claim for two (2) hours and forty (40) minutes' pay at the overtime rate was entered on Work Report Form MS-4597, dated October 11, 1965, by Signal Maintainer A. M. Ezzell and Assistant Signal Maintainer S. F. Bass.

Correspondence relative to the handling of the claim and appeals on the property has been reproduced and attached hereto, identified as Brotherhood's Exhibit Nos. 1 through 9. As indicated by this correspondence, this dispute has been handled by the Brotherhood in the usual and proper manner

on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement.

There is an agreement in effect between the parties to this dispute bearing an effective date of April 1, 1946, as amended, reprinted June, 1958 — a copy of which is on file with this Board and which is by reference thereto made a part of the record in this dispute.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: On October 11, 1965, Signal Maintainer A. M. Ezzell and Assistant Signal Maintainer S. F. Bass were working with section forces renewing crossties under the power switch machine at South Elm City, North Carolina. Before Messrs. Ezzell and Bass left to go to lunch (they did not observe the same lunch period as the section forces) Signal Maintainer Ezzell instructed the section foreman to dig out under the ties so the bolts holding the switch machine could be removed. When the signalmen returned from lunch the section foreman had dug out under the ties and had removed some of the bolts.

Claim was filed in behalf of Messrs. Ezzell and Bass for a call, or two hours and forty minutes at overtime rate, alleging the Scope Rule of the agreement between carrier and its employees represented by the Brotherhood of Railroad Signalmen was violated. The claim was declined at all levels because carrier did not violate the agreement. Attached as Carrier's Exhibits A, B, C, D and E are copies of the correspondence covering handling of the claim on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Ezzell arranged with an employee covered by the Agreement between the Carrier and its Maintenance of Way employees to perform work that is admittedly signal work. Thus we have the peculiar situation of Claimant arranging with a Maintenance of Way employee to perform signal work and then submitting a claim charging Carrier with a violation of its contract with the Signalmen's Organization.

Petitioner relies principally on Award 13960, wherein it was held that "an individual employee in a collective bargaining unit may not by agreement with the employer derogate the terms of the Collective bargaining Agreement." We readily distinguish that case from the instant one, by stating without equivocation, that there is no evidence in this record which would indicate that Carrier made any arrangement with the Maintenance of Way employee to perform signal work. We will accordingly dismiss 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 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 is dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1968.