



Award No. 16783

Docket No. SG-17325

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T Ritter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island and Pacific Railroad Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly paragraphs (a), (g), (l), and (m) of the Scope Rule and the September 21, 1961 Letter of Understanding, when on January 24, 1966, Signal & Communications Supervisor R. L. Pilger and Assistant Supervisor A. P. Schuldmiller loaded twelve (12) boxes of renewal batteries and one hundred (100) bond wires on a pick-up truck and transported them from Norton, Kansas, to Flagler, Colorado, which is on the Limon signal maintenance territory, a distance of about 200 miles, for immediate use.

(b) The Signal Maintainer who was assigned to work the Limon, Colorado, territory on January 24, 1966, be paid eight (8) hours at the punitive rate, in addition to that which he has been paid for work on that day. (Carrier's File: L-130-367)

EMPLOYEES' STATEMENT OF FACTS: Claimant E. L. Rollins is a regularly assigned signal maintainer with headquarters at Limon, Colorado with Saturday and Sunday as rest days.

Monday, January 24, 1966, regular work day for claimant Rollins, Messrs. R. L. Pilger, Supervisor Communications and Signals and A. P. Schuldmiller, Assistant Supervisor Communications and Signals transported in a company owned pick-up truck 12 boxes of battery material and 100 bond wires, from Norton, Kansas, to Flagler, Colorado, a distance of about 200 miles.

As there exists a Letter Agreement between the management of the Chicago, Rock Island and Pacific Railroad and the Brotherhood of Railroad Signalmen, dated November 20, 1961 stating that Supervisory Personnel would not be used to transport cross arms or other heavy material, the General Chairman of the Brotherhood filed a claim with the Supervisor Communications

OPINION OF BOARD: On January 24, 1966, one of Claimant's regular working days, Supervisor and Assistant Supervisor for Carrier's Communications and Signals transported in Carrier's pick-up truck twelve (12) boxes of battery material and one hundred (100) bond wires from Norton, Kansas to Flagler, Colorado; a distance of approximately 200 miles.

Carrier contends this claim is barred by Article V of the Agreement because it originally alleged violation as occurring at Limon, Colorado (30 miles from Flagler), and that the claim was not amended within 60 days of the alleged violation. This objection is not well taken. This Board will follow Awards 3256, 6016, 10639 and 13838. The change in the location of the violation (the point to which the material was delivered) does not in any way change the substance of the Claim. This Claim questions the right of Supervisory personnel to transport materials. The points of embarkation and delivery, of the involved materials, are of no more importance to the determination of this issue than the exact fractional number of miles between the points; or the names of the Supervisors; or the model of the pick-up truck used; *ad infinitum*. Therefore, the objection will be overruled and the merits of this dispute will be considered.

It was agreed between the parties in the Letter Agreement dated November 20, 1961 that Supervisory Personnel would not be used to transport cross arms or other heavy material. It has been admitted that Supervisory Personnel did transport the material involved in this dispute. Claimant's Exhibit 15, while containing some hearsay evidence which was not considered by this Board, contained sufficient probative and competent evidence in affidavit form, to show that more material of the same type had been transported to Flagler on March 28, 1966. This affidavit strongly indicates that the battery material transported on the date of this claim had been used. Claimant's Exhibit 16 is an affidavit stating that the Supervisor and Assistant Supervisor advised the affiant when they picked up the material involved herein, that this material "had to be gotten to Limon in a hurry for immediate use as the maintainer at Limon was out of both batteries and bonds." Exhibit 16 also repeated a hearsay statement not considered by this Board. These affidavits, together with the above set out stipulation and admission, constitutes a *prima facie* case for the Claimant, subject to rebuttal by the Carrier. This shifts the burden of proof to the Carrier.

Both parties to this dispute cite Third Division Award 5046 for support of their respective contentions. The pertinent part of Award 5046 is:

" * * * work in connection with the moving of materials to be used by signalmen at some future time is not exclusively signalmen's work. But work in connection with the movement of such materials from a warehouse or material yard to a signal construction or maintenance job, is the exclusive work of signalmen."

Therefore, in order to determine this case, we must first determine the meaning of the term "immediate use." The Organization contends that "immediate use" does not mean "instant use." Since the Letter Agreement of November 20, 1961 is silent as to time, this Board, in keeping with standard rules of contract interpretation, holds: When "time" becomes an element to be considered in determining a dispute and the Agreement is silent as the measure of time, then a "reasonable time" will be presumed to have been the intent of the parties signatory to the Agreement.

This Board therefore concludes that the Organization has presented a prime facie case in support of the Claimant; that Carrier has failed to sustain its burden of proof in that the record failed to show by competent evidence that the delivered material was not used by the signalmen within a "reasonable time" after delivery; and that "immediate use," as set out in Award 5046, does not mean "instant use." For further support of this conclusion see Award 16751 of this Division.

However, the claim for payment at the punitive rate will be denied. There is nothing but the bare claim void of necessary supporting evidence to the effect that this work would not have been performed during regular working hours.

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 Employee involved in this dispute are respectively Carrier and Employee 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 violated.

AWARD

Claim sustained at the straight rate of pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November, 1968.