



Award No. 16798

Docket No. SG-17074

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of the Louisville and Nashville Railroad Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope and Rule 2, when it required and/or permitted a Signal Inspector to inspect and test relays and signal mechanisms at Castleberry, Alabama, on March 4 and 5, 1966.

(b) Carrier be required to compensate Signal Tester P. E. Brock for two hours and twenty-five minutes at his time and one-half rate of pay because of this violation. (Carrier's File: G-304-12.)

EMPLOYEES' STATEMENT OF FACTS: As indicated by our Statement of Claim, we contend Signal Tester P. E. Brock is entitled to additional compensation because Carrier required and/or permitted a Signal Inspector to inspect and test relays and signal mechanisms on March 4 and 5, 1966, in violation of the Scope and Rule 2 of the Signalmen's Agreement.

As indicated by the correspondence attached hereto and identified as Brotherhood's Exhibits Nos. 1 through 14, this dispute was handled up to and including the highest officer of the Carrier designated to handle such disputes, without receiving satisfactory settlement. A procedural issue was raised but the record shows the claim is properly before this tribunal for adjudication on its merits.

There is an agreement in effect between the parties to this dispute, bearing an effective date of February 14, 1949, as amended, which is by reference thereto made a part of the record in this dispute.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: On or about March 4 and 5, 1966, Signal Inspector L. W. Oliphant, assisted by Signalmen J. D. Bowles and W. G. Cassidy, Jr., tested signal relays and mechanism at Castleberry, Ala-

It is our position that the merits do not justify the claim. As stated to you in our conference on September 15, 1966, in our investigation of the matter we were furnished with a copy of the General Superintendent of Communications and Signals' letter to you under date of July 19, 1966, and in view of the circumstances involved we could see no basis for the claim. It was, therefore, declined at that time.

It is still our position that there is no basis for the claim and it must remain as declined.

Yours truly,

/s/ W. S. Scholl
Dir. of Personnel"

The agreement involved became effective on February 1, 1949, and has been revised to October 1, 1950. A copy is on file with your division and by reference is made a part of this submission.

On September 1, 1941, nine years prior to date of the last revision of the Signal Employees' Agreement, the following became effective on this Carrier's property:

"Instructions for Maintaining, Inspecting and Testing Signals, Interlocking, Train Control, Train Stop, Crossing Protecting Apparatus, Spring Switches and Slide Detector Fences.

1103 — It shall be the duty of the Signal Supervisor to see that tests are made and reports submitted on designated forms as required by:

- (a) Sections 301 to 313, inclusive.
- (b) Sections 401 to 414, inclusive.
- (c) Sections 501 to 506, inclusive.
- (d) Sections 1000 to 1005, inclusive.

This assignment may be delegated to a system signal tester or to a division signal inspector, if either of them is available, otherwise the Signal Supervisor must make the tests and submit reports."

The above instructions applied to the testing which was involved on the dates of the claim. It not only has been the past practice for signal inspectors, signal supervisors or assistant supervisors to make tests of relays on division cut-ins, but as shown by the quotation, is provided for in the instructions which have been in effect for 26 years. Although the instructions were issued 26 years ago, and the agreement was revised nine years after the instructions were issued, Carrier has no record of any exception or objection on the part of employees to the instructions.

OPINION OF BOARD: The Claim here is based on a Signal Inspector, an employe not covered by the Agreement, inspecting and testing relays and signal mechanisms at Castleberry, Alabama, on specified dates.

Carrier defends on the basis that it has been the practice for supervisors to perform such work; but practice cannot control where, as here, the Scope Rule, by specific reference therein, reserves inspecting and testing work to the employees covered by the Agreement. It is true that this Division has recognized that supervisory employees are charged with some inspection and testing work as being inherent in the supervising of the work of their subordinates (Award 8049, among others); but a review of this record indicates that the work here performed by the Signal Inspector was not such inspecting and testing. We will hold therefore that the Agreement was violated.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November 1968.