



Award Number 17292

Docket Number SG-18003

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Lehigh Valley Railroad Company:

On behalf of Signalman G. J. Fech for one (1) day's pay (8 hours) at the current Signalmen's rate due to the fact that Signal Foreman Robbins was used to do signal work at Port Reading Jct., New Jersey, on March 15, 1967, due to a shortage of signal employees at this point.

EMPLOYEES' STATEMENT OF FACTS: Claimant in this dispute is G. Fech, Signalman in a gang working under the direction of Signal Foreman D. Robbins.

The dispute arose on March 15, 1967, at Manville, New Jersey because the Signal Foreman was assigned to or permitted to perform signal work not contemplated in classification rule Article 1, Section 1, which reads as follows:

"Section 1—SIGNAL FOREMAN—An employe assigned to the duties of Supervising the work of signal construction gang."

The Signal Foreman assisted in such work as making megger test of wires, checking signal aspects, using voltmeter and helping to install track risers, none of which is supervising.

The claim was handled in the usual and proper manner up to and including the highest officer of the Carrier designated to handle such disputes, without obtaining a satisfactory settlement.

There is an Agreement in effect between the parties, bearing an effective date of July 1, 1942, (revised September 1, 1949) as amended, which is by reference made a part of the record in this dispute.

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: There is in effect on this property an Agreement between the Lehigh Valley Railroad Company and the Brotherhood of Railroad Signalmen of America, effective September 1, 1949, which, by this mention, becomes a part of this Ex Parte Submission.

Carrier's Exhibits "A" through "H" are hereby made part of this Ex Parte Submission.

It is alleged and claimed that a Signal Foreman was used to perform signal work on date of claim, i.e., that Signal Foreman was working with signalmen megging out wires, checking signal aspects and working with a meter and helping set riser. The violation, the Employees state, (Carrier's Exhibit "A") took place at the derailment at Manville, N. J. Carrier denies the work was performed by the Foreman (Carrier's Exhibit "D").

Carrier submits work basis of this claim was not performed by the Signal Foreman on the date of claim, and, even if Foreman had performed such work, no violation of the Agreement took place.

(Exhibits not reproduced)

OPINION OF BOARD: It is alleged that on March 15, 1967, Signal Foreman was assigned or permitted to perform signal work at Manville, New Jersey not contemplated in classification rule Article 1, Section 1, which reads as follows:

"Section 1—SIGNAL FOREMAN—An employe assigned to the duties of Supervising the work of signal construction gang."

As remedy for the alleged violation, payment is demanded for Claimant, a Signalman covered by the Agreement, who on the date involved was part of the gang working under the direction of the subject Signal Foreman.

Carrier, denies that Signal Foreman did the work alleged—working with signalmen, megging out wires, checking signal aspects, working with meter and helping set track risers. It also takes the position that no violation arises from the performance of said work by Signal Foreman, inasmuch as;

(a) The Classification Rule cited by Claimant contains no prohibition against having Signal Foreman do the protested work.

(b) The Scope Rule includes both Signal Foreman and Signalman positions (among others) in its reference to:

"No employees other than those classified herein will be required or permitted to perform any of the work covered by the Scope of this Agreement.

It is understood the following classifications shall include all of the employes of the signal department performing the work described under the heading 'Scope'."

(c) The two classifications here involved are grouped in the same seniority class.

(d) There is no affirmative proscription anywhere in the Agreement against the use of the Signal Foreman, a higher rated employee, doing the work of Signalman, a lower rated employee.

(e) In its claim addressed to Carrier, Organization describes the alleged violation as one which took place "at the derailment at Manville, New Jersey." In Carrier's view, the Organization thereby admits that an emergency condition prevailed which necessarily permits wide latitude for Carrier in the use of forces to clear up said emergency.

(f) Finally, Carrier contends that there is no proper Claimant in this case because named Claimant was already working and under pay when the subject work was allegedly performed and no other Claimant has been identified.

We must decide at the outset whether the fact situation is in dispute and if so which of the disputed versions is adequately supported in the record.

During the processing of this dispute on the property, Carrier's Engineer, Signals and Communication, replying to claim made on behalf of Claimant by Organization's Local Chairman stated in part, under date of May 15, 1967 that it was his "observation that Foreman Robbins did not perform work."

In the communication which followed, under date of June 3, 1967, Organization's General Chairman, addressing Carrier's Chief Engineer refers to the letter of May 15th from Engineer, Signals and Communication, but is silent on the allegation made therein that the Foreman did not do the Signalman's work.

Again, following conference of October 16, 1967 between the parties, Chief of Personnel wrote, in part, to General Chairman under date of October 17, 1967:

"As stated at our conference, it was our position that Signal Foreman had not performed the work which is the basis for this claim and, therefore, there was no violation of the agreement."

Nowhere in the record before us, is there a showing that Claimant or his Organization on his behalf, has responded probatively to Carrier's contention that the protested work was not performed by Signal Foreman as alleged by Claimant.

However, the record does contain as a Carrier's exhibit, a copy of a letter dated October 17, 1967, from Carrier's Chief of Personnel to Organization's General Chairman which includes this statement at the bottom of letter:

"B C: Mr. J. H. Fitzpatrick

At the conference statement was made that Signal Foreman Robbins did perform the work contained in Mr. Behney's letter to you June 3, 1967. Supervisor Rubery, May 15, 1967, stated he did not. Please check and advise further.

M. W. Midgley"

Does this constitute an amendment of Carrier's posture of denial that Signal Foreman did the work in question? And, if so, is Claimant released of the burden of establishing that the work was, in fact, done by the Foreman?

It is our opinion that the quoted statement does not alter the consistently maintained posture of Carrier that the protested work was not done by Signal Foreman nor the consistent failure of Claimant to support its allegation that it was.

The statement was not contained in the original of this letter, a copy of which was inserted in the record by Claimant. It apparently was added to a

copy sent by Midgely to Fitzpatrick as an intra-Carrier message and, so far as we know, not seen by or known to Claimant employee or his Organization until submitted to our record as one of the attachment's to Carrier's ex parte submission. It does not change the record of Carrier's posture on the subject vis-a-vis the Claimant. It does not change the record of Claimant's posture on the subject vis-a-vis the Carrier.

It is too well-settled to need elaboration that when the parties are in disagreement concerning a set of facts on which a claim is based, the burden is on the party making the claim to support the existence of the facts it alleges. Awards 13330, 16288 and others. In the case before us there is a record of denial by Respondent of the fact of the usurpation of the protested work and a record of lack of support by Claimant that such fact existed.

We conclude therefrom, that Claimant has failed in this respect to meet its burden of supporting its claim and its case must thereby fall on those grounds, preventing us from reaching other considerations involved.

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 Petitioner has failed to prove that the Agreement was violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of July 1969.