



Award Number 17549

Docket Number SG-18004

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

**BROTHEROOD 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 Signalmen C. Fye, A. Beatty, and P. Roccaro for one day's pay (8 hours) each at the current Signalmen's rate, account on March 15, 1967, supervisory personnel were used to do work at Port Reading Junction, New Jersey, which work should have been performed by Signal Department employees and included the use of radios and checking blue prints in the testing of wires.

EMPLOYEES' STATEMENT OF FACTS: Claimants were Signalmen, members of a test gang being used on March 15, 1967, to check signal circuits, and restore to normal the signal facilities damaged during a derailment at Manville, New Jersey.

During the inspecting and testing of the signal facilities and the checking to identify and restore to normal each wire in damaged and repaired signal cables, Supervisory Officers participated in making such tests by conveying the necessary information from one test point to another by radios.

The communication of this information between members of the test gang had been accomplished by use of telephones used by each member of the gang prior to March 15, 1967.

The Scope Rule of the Signalmen's Agreement reads as follows:

"SCOPE

This agreement covers, rates of pay, hours of service and working conditions of all employees in the Signal Department (except supervisory forces above the rank of foreman, clerical forces and engineering forces) engaged in the work of construction, installation, inspecting, testing, maintenance and repair of signals, interlocking plants, automatic highway crossing protection devices and their appurtenances, wayside cab signal, train stop and train control equipment, car retarder systems, centralized traffic control systems, shop repairing of relays, signals, switch magnets, motors, et cetera, bonding of track for signal and interlocking purposes, and all other work generally recognized as signal work.

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 employees of the signal department performing the work described under the heading 'Scope'.

It will be observed that the performance of inspecting and testing is reserved to those covered by the Signalmen's Agreement, and that "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." When Supervisory Officers were used to assist in an integral part of the testing and inspecting, a claim was filed for the violation.

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.

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

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

On date of claim, the three claimants were on duty and under full pay when the subject supervisory work was performed.

There is no rule or agreement to provide for two day's pay for one day's work.

On March 15, 1967, date of claim, there was a derailment at Port Reading, N. J., which created an emergency condition which the Carrier had the right to meet and resolve in order to expedite the restoration of facilities to permit operation of its property. (Carrier's Exhibit "A" shows there was a derailment on the date of claim at Manville, N. J.).

In the process of restoring its facilities, Supervisors of the Carrier, not subject to the Signalmen's Agreement, performed the following, as shown by the Carrier:

"Use radios, read prints" (Carrier's Ex. "B").

"Use radio to expedite direction of employees actually performing the work" (Carrier's Ex. "D").

"Use of radio to supervise and check on work performance of Signalmen" (Carrier's Ex. "F").

"Work alleged to have been performed by supervisory employees was actually not work of the Signalmen's Agreement, but was a communicative function properly to be performed by supervisory personnel" (Carrier's Ex. "H").

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimants were Signalmen, members of a test gang being used on March 15, 1967, to check and repair signal facilities damaged during a derailment at Manville, New Jersey. The claim made

herein is based on the allegation that supervisory employees, not coming under the Signalmen's Agreement were doing work normally and properly the work of Signalmen under the Agreement. As a consequence, Employees demand the payment of one day's pay for three Claimants whose work was allegedly usurped.

The issue as to the facts narrows down to this: were supervisory employees using walkie-talkies and reading prints to supervise and direct employees, or for performing work ordinarily done by and reserved to signalmen covered by the Agreement?

Carrier concedes that supervisors used the portable radios and read prints at the time in question, but contend that these were two incidental and necessary activities of supervisory surveillance. There seems to be some admission by Carrier in the record, that such activities were of a greater "latitude" than usual at the time in question but that this was justified by an emergency situation; they insist nevertheless that the work done, "did not infringe upon the rights of work of the claimants".

Employees do not dispute the right of the officials to use portable radios or to read prints, purely as a means of supervisory overview. They contend, however, that these activities were used on this occasion as a means effecting circuit repairs and testing cables and connections,—work reserved by Agreement Scope Rule to covered employees.

Obviously, we have here a factual difference. This conflict in fact is not resolved by probative material in the record before us and we have no basis on which to act on it. Inasmuch as the burden of proof is on the Claimant, we must hold that the claim herein has not been probatively supported and dismiss it on those grounds.

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 it has not been shown that the Agreement was violated.

A W A R D

Case dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1969.

Central Publishing Co., Indianapolis, Ind. 46206

Printed in U.S.A.