

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Paul C. Dugan, 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 that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly Article I, Sections 1 and 4, and Article VIII, Section 7, when positions of Signal Foreman, Signalmen (3), and Helper were abolished effective October 31, 1967, on Bulletin No. 32, and similar positions advertised on Bulletins Nos. 29, 30, and 31, were created to perform work, not under the supervision of a Signal Foreman, but under the direction of a Leading Signalman.

(b) Carrier now be required to pay Mr. G. C. Boyle the difference between the Signal Foreman and Relay Inspector's rates of pay starting October 31, 1967, and continuing until the claim is settled.

EMPLOYEES' STATEMENT OF FACTS: On and for some time prior to October 31, 1967 the Lehigh Valley Railroad Company (hereinafter: Carrier) had headquarters at Hazelton, Pennsylvania a Signal Gang consisting of a Foreman, three Signalmen, and a Signal Helper. Under date of October 17, 1967, the Carrier bulletined, with headquarters at Coxton, Pennsylvania, the positions of a Leading Signalman, a Signalman, and a Signal Helper, (Brotherhood's Exhibit No. 1) and under date of October 23, 1967, abolished the positions of the employees assigned to the Signal Gang at Hazelton effective with the close of business October 31, 1967. (Brotherhood's Exhibit No. 3). There was thereafter no Signal Foreman working on the seniority district involved.

Because the Carrier's action was violative of the parties' Agreement, a claim was filed and progressed on behalf of Mr. G. C. Boyle (Claimant) for the difference between what was paid and the Foreman's rate. (Brotherhood's Exhibit Nos. 4 through 12).

There is an agreement between the parties to this dispute bearing an effective date of July 1, 1942, revised September 1, 1949, as amended which is by reference made a part of this dispute. Pertinent to this dispute are:

the successful applicants were notified of their having been assigned to the advertised positions (Carrier's Exhibit "D") :

Advertisement No. 29, Leading Signalman,
headquarters Coxton, Pa., assigned
to D. E. Allardyce.

Advertisement No. 30, Signalman,
headquarters Coxton, Pa., assigned
to W. S. Quinn.

Advertisement No. 31, Signal Helper,
headquarters Coxton, Pa., assigned
to L. J. Dowd.

The work performed by the above employees had absolutely no connection with the completed heavy construction work performed on the Hazleton Branch. It was, in fact, the elimination of insulated joints and their associated cut section locations on the Mountain Cut-off which is not located on the Hazleton Branch and begins at M.P. 158.5 and extends to Coxton Interlocking at M.P. 179.9.

As to the work performed by the three assigned employees account advertisements 29, 30 and 31, it was, in brief, a simple elimination of unneeded appurtenances and was work definitely not requiring any more than the three employees assigned to accomplish it. In no way was this work connected with the construction work on the Hazleton Branch.

Employees contended Carrier violated the Signalmen's Agreement, Article 1, Sections 1 and 4 and Article 8, Section 7. Carrier denied violating the Agreement, as will be shown in Carrier's Position & Contention.

Employees made demand that claimant G. C. Boyle be paid the difference between the Signal Foreman and Relay Inspector's rate of pay starting October 31, 1967 and continuing until the claim is settled.

Carrier will show in its Position and Contention that no basis whatsoever exists for such payment and that such demand payment is without basis of rule or agreement and should not be sustained.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization bases this claim on an alleged violation by Carrier of Sections 1 and 4 of Article I and Section 7 of Article VIII of the Agreement when positions of Signal Foreman, Signalmen (3) and Helper at Hazleton were abolished effective October 31, 1967 and similar positions, advertised in Bulletins Nos. 29, 30, and 31, were established at Coxton to perform work, not under the supervision of a Signal Foreman, but under the direction of a Leading Signalman.

At the outset, Carrier raises a procedural defect setting forth that the claim herein was not timely filed within 60 days from the date of occurrence of the claim, i.e. October 31, 1967.

Examination of the record substantiates Carrier's contention in this regard. By letter dated January 23, 1968, addressed to Carrier's Chief

Engineer Signals and Comm., J. E. Rubery, the Organization's Local Chairman, Gerard J. Morrissey, concluded said letter by stating: "You will therefore consider this letter as an official claim of Signal Foreman rate of pay for Gerald C. Boyle". Thus, failing to timely file this claim within the 60 day time limit requirement, we must dismiss this 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 barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1970.