



Award No. 18372

Docket No. SG-18492

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Virginian General Committee of the Brotherhood of Railroad Signalmen on the Norfolk and Western Railway Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly Rules 101-Scope (b) and 314(f), when on May 18, 1968, it instructed a yard master at Portlock Yard to clear trouble on Power Switch No. 10 at Carolina Junction and on June 7 and 8, 1968, allowed and/or permitted the Supervisor of Bridge and Building to clear trouble on the gates at Thole Street in Norfolk, Virginia.

(b) Carrier now pay Signal Maintainer A. D. Bohon two and seven-tenths (2.7) hours for May 18 and eight (8) hours for June 7 and 8, a total of ten and seven-tenths (10.7) hours at the time and one-half rate of pay, account of the violations cited in paragraph (a) above. (Carrier's File: S-410.)

EMPLOYEES' STATEMENT OF FACTS: There is an agreement in effect between the parties to this dispute (the carrier formerly known as The Virginian Railway Company) bearing an effective date of December 1, 1945 (reprinted with amendments to September 1, 1953), as amended, which is by reference made a part of the record in this dispute. The Rules thereof particularly pertinent to this dispute are:

"RULE 101. SCOPE

(a) This agreement covers rates of pay, hours of service and working conditions of all employees classified in Article 2 of this agreement, either in the shop or in the field, engaged in the work of construction, installation, inspecting, testing maintenance and repair of all signals, interlocking plants, 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 and other equipment of like character, bonding of track for signal and interlocking purposes, and all other work generally recognized as signal work.

" * * * 8 hours at the time and one half rate of pay for using Supervisor of Bridge and Building on June 7th and 8th, 1968 * * *."
(Emphasis ours.)

Manager-Signals and Communications denied the claims on August 21, 1968, and they were progressed to Vice President-Personnel by Employee's representative under date of August 31, 1968. (See Attachments G and H.)

Vice President-Personnel acknowledged receipt of above-mentioned letter under date of October 18, 1968, and also declined the claim stating, in part, "It is our position that no Signal Maintainer work was done by anyone not covered by the Scope of the Schedule Agreement * * *." (See Attachment I.)

Conference was held to discuss this matter on October 24, 1968, during which Carrier explained to the Employee's representative that Signal Maintainer Bohon was called repeatedly on June 7, 1968, and June 8, 1968, but his telephone rang busy each time. Employee's representative was also informed that no signal work was performed by anyone not covered by the Scope of the Schedule Agreement. Moreover, the representative was reminded that a second Signal Maintainer performed the work in question on June 7, 1968, only because Claimant Bohon's telephone was continuously ringing busy and, further, on June 8, 1968, all Signal Maintainers in the vicinity were called but none could be contacted. Finally, on Sunday, June 9, 1968, at 9:00 A. M., Carrier again tried to contact Mr. Bohon and since his telephone was still ringing busy, the Chesapeake Police Department was called and requested to go to Mr. Bohon's residence and have him call the Yard Office at Lamberts Point. (See Attachments F, J and N.)

On November 14, 1968, Carrier confirmed the aforementioned conference and reiterated its reasons for denying the claim in question. (See Attachment K.)

Then, contrary to all information given to Employee's representative during the conference of October 24, 1968, the representative replied to Vice President-Personnel under date of November 17, 1968, and he stated, in part: (See Attachment L)

" * * * the Carrier made no effort to get Mr. A. D. Bohon in accordance with the Board Case rendered in Mr. Bohon's behalf in 1963."
(Emphasis ours.)

However, Carrier will show that the only similarity between the Board Case the representative has cited and the case in question is simply that each claim was filed by the same claimant.

(Exhibits not reproduced.)

OPINION OF BOARD: In the record made on the property Carrier failed to adduce the documents designated as Attachments E, F, J, M, N and O of its Submission. The documents, consequently, are not properly before us. They, therefore, have no evidentiary value in our consideration of the dispute. Circular No. 1.

Our adjudication of the dispute is confined, by jurisdictional limitation, to the factual record made and issues raised on the property.

The pertinent provisions of the Agreement which we have been petitioned to interpret and apply are:

"RULE 1. SCOPE

(a) This agreement covers rates of pay, hours of service and working conditions of all employees classified in Article 2 of this agreement, either in the shop or in the field, engaged in the work of construction, installation, inspecting, testing, maintenance and repair of all signals, interlocking plants, 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 and other equipment of like character, bonding of track for signal and interlocking purposes, and all other work generally recognized as signal work. (Emphasis ours.)

(b) 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."

"RULE 314.

(f) Employees assigned to or filling vacancies on regular maintenance assignments and paid on an hourly basis will respond to calls when called. Assignee filling position will be called unless registered absent."

Claimant was, at all times material herein, assigned as Signal Maintainer to the signal section or territory involved; and, no issue was raised on the property as to his availability.

On Saturday, May 18, 1968, the Operator at South Norfolk Tower called the Signal and Communications Supervisor and reported that he could not get No. 10 Switch to reverse. The Supervisor told the Operator to call the Yardmaster at Portlock and have him visually inspect the switch to determine whether there were any rocks obstructing the switch points. The Yardmaster upon his arrival at the switch found rocks obstructing the switch points and he removed them. Petitioner, citing the Rules, *supra*, contends that Claimant, under the circumstances, should have been called and paid for a minimum call. Carrier's reasons for denial of the Claim on the property are: (1) the Claim is not supported by the Rules Agreement; and (2) the work of removing rocks from a switch is not exclusively reserved to Signalmen.

On June 7, 1968, a highway crossing protective device (crossing signal with gate) at Thole Street in Norfolk, Virginia, was reported to be malfunctioning—the lights flashed continuously and the gates were down blocking street traffic. Carrier caused the Terminal Supervisor, Bridges and Buildings, to travel to the site to inspect, find the cause, and remedy. On June 8, 1968, the same situation reoccurred and the Terminal Supervisor was again dispatched to the site. Petitioner contends the inspection and necessary repair, on each day, was work exclusively reserved to Signalmen to which Claimant had a contractual right. The defenses proffered by Carrier, on the property, are:

(1) the claim was not supported by the Rules Agreement; and (2) "no Signal Maintainer work was done by anyone not covered by the Scope of the Schedule Agreement on the dates of the claim and payment is denied."

We find that: (1) Rule 101(a) and (b) exclusively reserves to Signalmen the work of "inspecting, testing, maintenance and repair of all signals, interlocking plants, highway crossing devices and their appurtenances;" (2) upon discovery of the malfunctions here involved Carrier was contractually obligated to assign a Signaller to inspect the devices to determine the causes and remedy the defects; and (3) Claimant is a proper Claimant. Cf. Award 13938. We will sustain paragraph (a) of the Claim.

Petitioner did not adduce evidence as to the amount of time actually required on each of the three dates involved to remedy the malfunctions. We, therefore, will sustain paragraph (b) of the Claim only to the extent of compensating Claimant at the rate of pay for a minimum call for each date.

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 Carrier violated the Agreement.

AWARD

Paragraph (a) of the Claim sustained.

Paragraph (b) of the Claim sustained to the extent prescribed in the Opinion, *supra*.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January, 1971.