



Award No. 18996
Docket No. SG-15668

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company that:

(a) The Southern Pacific Company violated the current Signalmen's Agreement (effective April 1, 1947; reprinted April 1, 1958, including revisions) when it failed and/or declined to apply the Scope Rule of the Agreement, which resulted in the violation of Rule 70, on April 4, 1964, by calling and employing an employee not covered by the Signalmen's Agreement to perform recognized signal work.

(b) Mr. W. A. Stevens, senior furloughed Signalman on the Rio Grande Seniority District at the time of above violation, be allowed three and one-half (3½) hours at the overtime (time and one-half) rate of Signalman for April 4, 1964 — an equal amount allowed the employee erroneously used.

(Carrier's File: SIG 152-163)

EMPLOYEES' STATEMENT OF FACTS: This claim is a result of Carrier's action of using a track employee to accompany a signal maintainer who was called to locate and clear signal trouble on his territory, and is based on our contention that the senior furloughed signalman should be paid at the Signalman's overtime rate of pay for the amount of time the track employee was used.

Testing, inspecting and repairing signals and signal apparatus is signal work covered by the Scope of the Signalmen's Agreement. The track employee who was used to assist the signal maintainer in the performance of such work on the claim date holds no seniority or other rights under the Signalmen's Agreement.

The incident occurred on the Carrizozo, New Mexico, signal maintenance territory. Mr. J. L. Turner, the Signal Maintainer assigned to the Carrizozo district, is also the Brotherhood's Local Chairman who handled this claim at the local level.

At about 7:50 P. M. on April 4, 1964, a westward train reported signal 14609 in "stop" position. As this signal is on the Carrizozo signal maintenance

repairs thereto. In accordance with this procedure, Signal Maintainer J. L. Turner, whose headquarters is located at Carrizozo, was called by the train dispatcher at approximately 7:40 P. M., April 4, 1964. At the same time the signal maintainer at Carrizozo was notified, the train dispatcher also arranged to have an employe of the Track Department called to determine the extent of any track damage that could be involved in this instance. As a consequence, Extra Gang Laborer H. Monreal, assigned to Extra Gang 24, located at Carrizozo, was called and Signal Maintainer Turner and Laborer Monreal proceeded together to the site of difficulty.

4. Upon arrival at Signal 14609, Signal Maintainer Turner determined that the malfunction was in the signal equipment due to an open slot coil in which the high winding had been damaged by lightning. The signal maintainer made the necessary repairs to the signal equipment, after which both the extra gang laborer and the signal maintainer returned to Carrizozo, going off duty at 11:20 P. M., April 4, 1964. For the service performed that date both employes were allowed 3 hours and 30 minutes overtime at their respective rates of pay.

5. April 4, 1964, Mr. W. A. Stevens (hereinafter referred to as the claimant) was the senior furloughed signalman on the Rio Grande seniority district, on Carrier's Tucson-Rio Grande Division, which covers the territory here involved.

6. By letter dated May 5, 1964 (Carrier's Exhibit "A"), Petitioner's Local Chairman submitted to Carrier's Division Superintendent a claim in behalf of claimant, based on the premise that claimant should have been called April 4, 1964 to assist the signal maintainer in the circumstances here involved. By letter dated June 19, 1964 (Carrier's Exhibit "B"), Carrier's Division Superintendent denied the claim.

By letter dated July 2, 1964 (Carrier's Exhibit "C"), Petitioner's Local Chairman advised Carrier's Division Superintendent that his denial of the claim was not acceptable.

By letter dated July 6, 1964 (Carrier's Exhibit "D"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel and by letter dated August 28, 1964 (Carrier's Exhibit "E"), the latter denied the claim.

By letter dated September 9, 1964 (Carrier's Exhibit "F"), Petitioner's General Chairman advised Carrier's Assistant Manager of Personnel that denial of this claim cannot be accepted.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization contends that Carrier violated the Agreement when it permitted a track employe to assist a signal maintainer on April 4, 1964 in removing and replacing a defective slot coil, when said track employe carried the necessary signal tools and equipment from a signal truck to the signal and by holding a light in position where the signal maintainer could better see in order to correct the signal defect.

The Organization argues that the Scope Rule of the Signalmen's Agreement specifically covers the work of testing, inspecting and repairing of signals and signal apparatus; that there are no exceptions which would permit Carrier to use other than signal employes in the performance of signal work

covered by the Scope Rule; that as the track employe was called to accompany the signal maintainer, it is obvious that he was called to assist in locating and clearing the signal trouble; that the signal maintainer and track man were called to perform signal work, and only signal work, not track work, was required and performed; that there was no indication that any track circuit trouble existed when the signal maintainer and track employe were called out; that if there had been track trouble in any one of the five track circuits, the train crew should have reported at least one other west bound signal in "stop" position; that the Scope Rule does not hinge on weather conditions.

Carrier's position is that the maintenance of way employe was not called to perform and did not perform "recognized signal work;" that in view of the emergency involved, it was proper to call the extra gang laborer, as well as the signal maintainer, to investigate possible track trouble that would involve track services; that since there was no way for Carrier to determine the exact cause of Signal 14609 indicating a stop position without an on-the-ground investigation, Carrier simply exercised its judgment to send employes to handle either track or signal work, as required, and any other handling might have resulted in delay to train operations while waiting for the track employes, had it developed that their services were needed; that since the alleged work performed by the track employe, i.e., carrying signal maintainer's tools and holding a "trouble light" are not specifically mentioned in the Scope Rule, petitioner has the burden of proving that said work was performed "exclusively" by Signalmen, which he failed to do in this instance; that the purpose of having a track department employe accompany the signal maintainer was not to give assistance in carrying tools or holding a light as petitioner contends, but for the purpose of making a track inspection; that if the signal maintainer successfully prevailed upon the track employe to give him assistance when not necessary, this would not provide a proper basis for any penalty payment due to petitioner's failure to prove that Carrier intended to violate the Agreement; that Claimant suffered no loss of earnings since he was furloughed and would not have been subject to call.

The burden is on Claimant herein to prove that Carrier violated the Agreement in this instance. The record is barren of any evidence that Carrier specifically called the track employe to perform signal work. The record is also void of evidence showing that the signal maintainer objected to the track employe assisting him in the repair of the signal defect. Further, the record does not show that the track employe, with the knowledge and consent of Carrier, performed the work in question.

In Award No. 16837 this Board stated:

"This Board has held on numerous occasions that absent directions and authority, voluntary service cannot be asserted to support a claim * * *."

See also Award Nos. 12907, 13385 and 18369 among others.

For the aforesaid reasons, we must deny the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1972.