

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, 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 (Pacific Lines) that:

(a) The Southern Pacific Company violated the current Signalmen's Agreement (effective April 1, 1947 and reprinted April 1, 1958, including revisions) when it failed and/or declined to apply the Scope Rule, which resulted in violation of the Loss of Earnings Rule #70, by assigning the recognized work of installing electric switch heaters to switches at Emigrant Gap, California, to employees not covered by the Signalmen's Agreement on September 21, 22, 23, 24; October 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30; and November 4, 5, 6, 1964.

(b)-1. Mr. T. R. Johnson be allowed two hundred sixty-four (264) hours at the straight time rate of Leading Signalman, and sixty-six (66) hours at the time-and-one-half rate of Leading Signalman;

(b)-2. Mr. E. E. Anderson and Mr. W. R. Davis be allowed two hundred sixty-four (264) hours each at the straight time rate of Signalman, and sixty-six (66) hours each at the time-and-one-half rate of Signalman;

(b)-3. Mr. G. A. Lindenthal be allowed two hundred sixty-four (264) hours at the straight time rate of Assistant Signalman and sixty-six (66) hours at the time-and-one-half rate of Assistant Signalman;

(b)-4. Mr. R. H. Lewis be allowed two hundred sixty-four (264) hours at the straight time rate of Signal Maintainer and sixty-six (66) hours at the time-and-one-half rate of Signal Maintainer;

All performed on the dates mentioned in paragraph (a) above.

(Carrier's File: SIG 152-172)

EMPLOYEES' STATEMENT OF FACTS: As indicated by our Statement of Claim, this dispute is based on Carrier's action of assigning other than signal employees to install electric switch heaters at Emigrant Gap, California.

Electrical Department employees. Each of the new electric switch heater units (see Carrier's Exhibit "A") utilizes an electric heating element — commonly referred to as 'CALROD' — attached to flange side, "T" section of switch rails, and adjacent to switch rods and operating switch point rods, and is coupled to an automatic control device which senses moisture (snow) and rail temperature (ice). These electric switch heaters are not controlled through the signal system, and, in fact, are not connected to the signal system in any manner whatsoever.

Carrier's records indicate that work on the installation of the electric switch heaters at Emigrant Gap was initiated on September 23, 1964, and completed on November 6, 1964, with no service performed on October 15, 1964, involving a total of 1289½ man hours.

3. By letter dated November 13, 1964 (see Carrier's Exhibit "B"), Petitioner's local chairman presented to Carrier's Division Superintendent at Sacramento, claim in behalf of certain employees (hereinafter referred to as claimants) set forth in the above-quoted Statement of Claim, for two hundred sixty-four (264) hours at straight time rate and sixty-six (66) hours at time and one-half rate of Leading Signaller, Signaller, and Assistant Signaller, as the case may be, for September 21, 22, 23, 24, 25, 28, 29, 30; October 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30; November 4, 5 and 6, 1964, based on the contention that the work here complained of was signalmen's work. The Carrier's Division Superintendent advised Petitioner's local chairman by letter dated December 10, 1964. (Carrier's Exhibit "C"), that the claim was denied.

By letter dated December 21, 1964 (Carrier's Exhibit "D"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated February 19, 1965 (Carrier's Exhibit "E"), the latter denied the claim, advising the General Chairman, as discussed in conference, that no work was performed on the electric heaters on September 21, 22, or October 15, 1964, for which claim has been made nor do Company records indicate the total number of hours involved in this work to be 1650 hours, as stated in claim. Copy of General Chairman's response thereto dated March 3, 1963, in which claim was reduced by twenty-four (24) hours for each of claimants, is attached as Carrier's Exhibit "F."

(Exhibits not reproduced.)

OPINION OF BOARD: Claim seeks reparations for Claimants herein under Rule 70 of the Signalmen's agreement as a result of Carrier assigning allegedly recognized signal work of installing electric switch heaters at Emigrant Gap, California, to Electricians represented by another Union, on several dates during the months of September, October and November 1964.

It is well settled that Claims before this Board are decided on the facts in the case before us. It is also well settled that the Petitioner has the burden of proof. Equally well settled is that findings may be made on evidence in the record when such evidence is not denied or refuted.

Carrier submits that the electrical switch heaters herein have no connection with Carrier's signal system. Thus they are handled by Electricians in the same way as other types of switch heaters having no connection with Signals have been handled in the past. Carrier contends further that as other employees have always installed independently operated switch heaters not

ties into Signal circuits the work in dispute was not reserved for Claimants. Finally, Carrier seeks denial of the herein claim on the basis that the traditional, historical assignment of the disputed work to electrical employees under their agreement precludes a finding of merit in this Claim.

The record fails to reveal that Petitioner herein took exception to Carrier's contentions which were raised on the property in timely fashion. Nor did Petitioner submit any countervailing evidence to prove that the work was reserved exclusively to signal forces.

On the state of this record we are constrained to find that Petitioner did not carry the burden of proof required of it. We, therefore, will dismiss the Claim herein solely because of lack of proof.

The possible third party, International Brotherhood of Electrical Workers, was notified of the dispute and made a submission to this Board which is in essential agreement with Carrier's position.

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 should be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killcen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1972.