

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19501  
Docket Number SG-19289

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Denver and Rio Grande Western Railroad Company that:

(a) Carrier violated the Signalmen's Agreement, as amended, particularly the Scope and Rule 3, when, on November 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, and 15, 1969, Carrier Officer -- H. S. Law, Signal Construction Engineer -- did perform the duties of Signal Gang Foreman, Signal Gang No. 2, while the incumbent Foreman was on vacation.

(b) Carrier now be required to pay Signal Maintainer H. W. Thomas for 96 additional hours at Signal Foreman's hourly rate of \$4.261, as a consequence of the violation. (Carrier's File: SG-1-70; General Chairman's File: HWT-11-23-69)

OPINION OF BOARD: Beginning November 3, 1969, H. S. Clary, Foreman of Signal Gang No. 2, observed two weeks of his vacation. During his absence, Petitioner alleges that his duties were performed by Signal Construction Engineer H. S. Law, who is not an employee covered by the applicable Agreement between the parties.

Claim was filed on behalf of Signal Maintainer H. W. Thomas, Petitioner claiming that the use of Law as Foreman violated the Schedule Agreement and the June 10, 1958 Memorandum of Agreement Supplement A.

The claim rests on the contention that Law was assigned to fill the Foreman's position and that he performed the duties of that position during the absence of Foreman Clary. Carrier, among other defenses raised on the property, denies that Law performed the duties of Foreman. It denies assigning Law to the position during Clary's vacation.

If Law did not perform the Foreman's duties, then the Rules relied on by the Petitioner as well as Supplement A were not violated. Thus, this question is crucial to a proper determination of the claim.

A thorough review of the record reveals that the Petitioner on the property argued that Law did perform the Foreman's duties while Carrier denied same. The record is devoid of evidence which would substantiate Petitioner's allegation and consequently we are unable to resolve this factual conflict. Since this factual determination is vital to the claim and we are unable to resolve it, we are constrained to dismiss the claim.

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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 basic facts are in dispute.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

E. A. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1972.