

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19595  
Docket Number SG-19343

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railroad Signalmen  
(  
(Southern Pacific Transportation Company  
(Pacific Lines)

STATEMENT OF CLAIM: Claims of the General Committee of the **Brotherhood of Railroad Signalmen** on the Southern Pacific Transportation Company (former Pacific Electric Railway Company) that:

Claim No. 1

(a) The Southern Pacific Transportation Company violated the current Agreement between the former Pacific Electric Railway Company and its Employees, represented by the Brotherhood of Railroad Signalmen, effective September 1, 1949 (including revisions), particularly the Scope Rule.

(b) Messrs. W. Easterman, R. Minard, J. Duff, C. Hurt, P. Meders and J. Shumate be allowed eight (8) hours at their respective basic daily rate of pay for September 26, 1969, in addition to compensation previously allowed for that date.

[Carrier's File: SIG 152-264]

Claim No. 2

(a) The Southern Pacific Transportation Company violated the current Agreement between the former Pacific Electric Railway Company and its Employees, represented by the Brotherhood of Railroad Signalmen, effective September 1, 1949 (including revisions), particularly the Scope Rule.

(b) Messrs. W. Easterman, R. Minard, J. Duff, C. Hurt, P. Meders, and J. Shumate be allowed eight (8) hours at their respective basic daily rate of pay, in addition to other compensation previously allowed for October 21, 1969.

[Carrier's File: SIG 152-265]

OPINION OF BOARD: Claimants are employed in Carrier's Signal Department. On September 26 and October 21, 1969, in connection with moving an oversized barge-like piece of equipment (for over-seas shipment) along city streets in Long Beach, California, employees of Contractors Cargo Company removed and reset Carrier's Signal Flasher (a highway crossing protection device) at 7th Street and Pico Avenue to make room for passage.

Petitioner claims (without denial by the Carrier) that under the Agreement the work of removing and resetting the Flasher was reserved to Carrier's Signal Employees. The Organization claims that "in allowing the employees of Contractors Cargo to perform signal work" the Carrier violated the Agreement.

The record contains no probative evidence that the Carrier authorized or "allowed" the work in question to be performed by employees of Contractors Cargo; the Carrier denies that it gave any permission or authority for the work. There is even some question as to Carrier's knowledge of the work till after the fact.

In Award No. 13626 we held:

"...if any work was performed on Erie-Lackawanna property or equipment, it was performed without the consent or agreement of Erie-Lackawanna Railroad. Therefore, the burden of proof shifted to the Organization to disprove Carrier's contentions. The record is void of any such proof and it must be concluded that the Organization has failed to sustain its burden. To hold Carrier responsible for Monon's unauthorized act would place Carrier in an indefensible position. See Awards 9247, 10549, 12907, 14838, and 14889 among many others."

We shall reaffirm the position which we have taken in a long line of cases that conduct of third parties which is not authorized by the Carrier cannot serve as a proper basis for claims such as in this case.

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 Agreement was not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: E. G. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1973.