

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20318  
Docket Number SG-19916

Joseph Lazar, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(George P. Baker, Richard C. Bond, Jervis Langdon,  
( Jr., and Willard Wirtz, Trustees of the Prop-  
( erty of Penn Central Transportation Company,  
( Debtor

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Penn Central Transportation Company (former New York Central Railroad Company-Lines West of Buffalo) that:

(a) Carrier violated Rule 1-Classification of the Foremen, Inspectors & Technicians Agreement in effect February 15, 1961, as amended, when Carrier required an employe not covered by this Agreement (Mr. T. Washam, employed on former PRR Railroad) to perform work on hot box detector and associated equipment located at Cherry Valley, Ohio, between the hours of 8:00 A. M. and 1:00 P. M. on April 8, 1971. Cherry Valley, Ohio, is located at MP-21-Youngstown Branch-District No. 2-Western District of former New York Central.

(b) Carrier now be required to compensate, as penalty time, Electronic Technician L. D. White, on whose assigned territory the violation of Agreement referred to in (a) above occurred, five (5) hours' pay at his respective pro rata hourly rate for date of April 8, 1971.

OPINION OF BOARD: The claim here is based on the factual contention that "Carrier required an employe not covered by this Agreement (Mr. T. Washam, employed on former PRR Railroad) to perform work on hot box detector and associated equipment located at Cherry Valley, Ohio, between the hours of 8:00 A.M. and 1:00 P.M. on April 8, 1971." The Claimant, Electronic Technician L. D. White, asks that Carrier be required to compensate him, as penalty time, for the five hours worked by Mr. Washam, at Claimant's respective pro rata hourly rate for date of April 8, 1971.

Claimant L. D. White held a regularly assigned position of Electronic Technician, headquarters, Cleveland, Ohio, work week, Monday through Friday, Saturday and Sunday rest days. As such, Claimant was covered by the Agreement between the Carrier (former New York

Central Railroad) and its employees classified as Electronic Technicians, Retarder Technicians, Inspectors and Foremen, represented by the Brotherhood of Railroad Signalmen, effective February 15, 1961, as amended. His assigned territory included Cherry Valley, Ohio, located on the Youngstown Branch, Erie Signal District, Western District of the former New York Central Railroad.

The Carrier, in its Rebuttal, states: "During the handling of the dispute on the property, the Carrier at each stage of the handling denied that Washam performed any work on the detector."

We have carefully scrutinized the correspondence between the Parties, Brotherhood's Exhibits No. 1, No. 2, No. 3, No. 4, No. 5, No. 6, No. 7, No. 8, No. 9, No. 10, and No. 11, and it is clear that the Carrier unequivocally denied at each stage of the handling on the property that Washam performed any work on the detector.

The Carrier has readily acknowledged that "Mr. T. Washam was at the location, but performed no work." The Carrier has also apprised the Brotherhood that "The work was performed by Relay Inspector J. E. Daniels. In fact, the trouble cleared while Mr. Daniels was looking for it." (Brotherhood's Exhibit No. 3). Further, the Carrier has readily informed the Brotherhood, "When the detector readout was located from Cleveland to Youngstown, the information was transmitted from the field to Youngstown via 'H' carrier. Mr. Washam was sent to the field location because it was felt that with his considerable experience with 'H' carrier, he might be able to advise the field people on what to look for. Actually the carrier evidently went to work when a tube was touched by Relay Inspector Daniels without having taken any corrective action." (Brotherhood's Exhibit No. 6).

In this same Exhibit No. 6, the Carrier states:

"We do not agree that Mr. Washam's presence at the field location is a valid basis for a claim. It simply does not follow that his presence indicates an intent to violate our agreement with your organization. Your appeal failed to furnish any evidence that Mr. Washam performed work that normally accrues to the Electronic Technician class. The fact that he was paid at the rate of Electronic Technician for going off his assigned territory is immaterial to this claim and is not the concern of your organization."

We are of the opinion that steps taken by the Carrier preparatory and preliminary to the possible utilization of Mr. Washam do not constitute probative evidence of actual work by Mr. Washam on the detector.

The Carrier, however, not only has denied that Mr. Washam performed any actual work on the detector, but the Carrier has also stated as fact that "the carrier evidently went to work when a tube was touched by Relay Inspector Daniels without having taken any corrective action." This statement was never denied by the Brotherhood. Instead, the correspondence (May 29, 1971 letter by General Chairman) shows: "\*\*\*the Organization submits it has not verified whether or not Inspector Daniels performed any work at the location and it is the position of the Organization that whether or not Inspector Daniels performed work or was even present is immaterial\*\*\*".

We cannot agree with the Organization that it is immaterial whether or not Inspector Daniels actually performed the work which it alleges was performed by Mr. Washam. The burden of proof rests on the Organization to establish by probative evidence its claim that "Carrier required an employee not covered by this Agreement (Mr. T. Washam, employed on former PRR Railroad) to perform work on hot box detector and associated equipment located at Cherry Valley, Ohio, between the hours of 8:00 A.M. and 1:00 P.M. on April 8, 1971." Here, we find that the Carrier's statement that the work on the detector was performed by Inspector Daniels is not denied on the property. We are of the opinion that since this statement is not denied on the property, and since there is no showing of probative evidence that such work was actually performed by Mr. Washam, the Organization's burden of proof has not been met. Under the circumstances, it is not necessary for us to reach questions of interpretation or application of Rule 1 - Classification.

**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 has not been violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July 1974.