

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20321  
Docket Number SG-20134

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(The Chesapeake and Ohio Railway Company  
(Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District) that:

(a) The Carrier violated the current Signalmen's Agreement, particularly Scope Rule 1, on August 6 and again on August 19, 1971, when it assigned or allowed employees not covered in said Agreement to remove, transport, and hook back-up an electric motor used to power one of the air compressors that supplies air to the retarders at Stevens Rump, Ky. As a result, we now ask that

(b) The Carrier pay Signal Maintainer H. H. Clark and Signal Maintainer Helper E. V. Cotcamp a total of four (4) hours each at their time and one-half rates of pay for the violation cited in part (a) of this claim. [Carrier's File: 1-SG-299]

OPINION OF BOARD: Carrier utilized employees not subject to the Agreement between the parties to perform certain work dealing with air compressors used for supplying air which operates car retarders.

The Organization alleges a violation of its Scope Rule:

"This agreement covers rates of pay, hours of service, and working conditions of all employees engaged in the maintenance, repair and construction of...car retarder systems..."

The Organization relies upon Award No. 9210 (McMahon) which resolved a dispute between these same parties. In that Award, which considered the same Scope Rule, the Board considered certain labor required in wiring two 75 horsepower compressor motors, which motors were to be used to operate air compressors necessary for operation of the car retarder system. The Board noted that the Agreement provided for the maintenance, repair and construction of car retarder systems, and it contained no exceptions or modifications. The Board concluded that the Scope Rule did not limit, in any manner, the size, capacity, or installation of electric motors, such as were under consideration in that case.

In the instant dispute, it appears that we are concerned with a 250 horsepower compressor. The Carrier asserts that the compressor furnishes air for use in the car retarder system, but it is not an integral part of that system because it also provides air for other purposes. The Organization counters by stating that the prime purpose of the compressor is to operate the retarder system.

We have carefully considered the assertions of the parties and the cited Awards. We do not feel that Award No. 12411, between these parties, disposes of the issue; but rather that Award No. 9210 controls. We are unable to determine a significant difference between the type of claim submitted there and the one here under consideration, especially when one notes that the Scope Rule does not limit the size, capacity or installation of electric motors.

In any event, another factor compels us to refuse to deny the claim. It was noted, while the matter was considered on the property, that "This case involves the same overall principle as involved in several other grievance items which have been recently filed...". In its Submission to the Board, the Carrier points to the similarity between this claim and claims submitted here in Dockets SG-19574 and SG-19658. This Board has issued Awards in both Dockets (19850 and 19852). The Board held that Docket SG-19574 was "...almost on all fours with that involved in Award No. 9210, between the same parties and involving the same agreement in a similar issue." The Award concerning Docket SG-19658 sustained the claim for the same basic reasons.

It has long been held by this Board that we should not, at a later date, with a different Referee participating, substitute our judgment for that in a precedent Award, unless we are unequivocally convinced and can find that the prior judgment is without support. See Award 11788 (Dorsey) for example. This is significantly the case when the same parties and same Agreement provisions are involved. Upon a review of the prior Awards between the parties (and having contemplated Awards dealing with similar issues concerning other Carriers) we are not convinced that Awards 19580 and 19582 are palpably erroneous.

Notice was given to the International Brotherhood of Electrical Workers. The Board has fully considered their contentions as presented to the Board.

Concerning the claim for compensation, the Carrier notes that the Claimants were on duty and under pay at the time, and consequently urges that no Damage Award be issued. This Referee has

previously determined, on a number of occasions, that full employment is not a deterrent to awarding damages. However, we note that Claimants seek time and one-half rates of pay as a remedy. As we review the Docket in its entirety, we see no basis for a Damage Award of premium pay. Accordingly, we will only sustain the claim to the extent of requiring payment at the straight time rate of pay.

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 Employee involved in this dispute are respectively Carrier and Employee 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 violated.

A W A R D

Claim (a) sustained.

Claim (b) sustained to the extent set forth in the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

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