

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20544
Docket Number SG-20359

Dana E. Eischen, 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 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 and Rule 8 of Article 1, when it allowed former Pacific Electric Signalmen to perform work that is recognized as work performed by the Bonders and Welders.

(b) Mr. A. Baez and Mr. L. Burns be allowed four (4) hours for February 12, 1972 at the straight time rate of pay for Bonders and Welders. (Carrier's File: SIG 152-302)

Claim No. 2:

(a) The Southern Pacific 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 and Rule 8 of Article 1, when it allowed Signal Maintainer to perform work that properly belongs to the Bonders and Welders.

(b) Mr. Garcia and Mr. Bozaan be allowed compensation for two hours and forty minutes at the time and one-half rate for May 26, 1972. (Carrier's File: SIG 152-310)

Claim No. 3:

(a) The Southern Pacific Transportation Company violated the agreement between the Pacific Electric Railway and its employees represented by the Brotherhood of Railroad Signalmen effective September 1, 1949 (including revisions), particularly the Scope Rule and Rule 8 of Article 1, when it allowed a signal maintainer to perform work that belongs to the Bonders and Welders.

(b) Mr. A. Baez and Mr. L. Burns be allowed two hours and forty minutes compensation at their time and one-half rate for July 29, 1972. (Carrier's File: SIG 148-218)

Claim No. 4:

(a) The Southern Pacific Transportation Company violated the current agreement between the (former Pacific Electric Railway) and its employees represented by the Brotherhood of Railroad Signalmen effective September 1, 1949 (including revisions) particularly the Scope Rule and Rule 8 of Article 1, when it allowed a signal maintainer to perform work that belongs to the Bonders and Welders.

(b) Mr. L. Phillips and Mr. A. Lozano be allowed compensation for two hours and forty minutes at the time and one-half rate for August 13, 1972. (Carrier's File: SIG 148-217)

OPINION OF BOARD: This case, like our recent Award 20543 presents claims that the Scope and Classification Rules of the controlling Agreement were violated when, on each of four occasions between February 12, 1972 and August 13, 1972, signal maintainers performed certain rail bonding work.

At the outset, it should be noted that Carrier maintains that each of these claims is untimely and not properly before our Board. As Carrier develops this defense theory, it contends that the work herein originally was assigned to Signal Maintainers some 12 years ago and that the violation if any, arguendo, occurred at that time and may not now legitimately be raised 12 years later under the time limit on claims rule of the Agreement. Petitioner on the property and in written submission to this Board answered this contention by asserting that the claims are for "continuing violations", although it is noted that Petitioner disavowed this approach in panel discussion. Upon consideration of these positions we are constrained to observe that both the timeliness argument of Carrier and the continuing violation assertion of Petitioner are mere gossamer and add nothing of substance to our consideration of the case.

We are not persuaded by Carrier's argument that the statute of limitations has run on past violation, if any. On the other hand, Petitioner's assertion of "continuing violation" misconstrues the meaning and application of that term. Here we have not repeated and continued violative acts as Petitioner alleges nor do we have clear evidence of a single violative act with ongoing damages as Carrier alleges. Rather, this record shows nothing more than four alleged occurrences of separate acts of violation of the Agreement. Each of the claims herein was initiated within 60 days of the alleged violation and accordingly all are timely and properly before us for resolution.

Turning to the merits of this case, we find that Petitioner relies upon the Scope and Classification rules, in addition to seniority rules to support its claim that bonding work is reserved exclusively by the Agreement to bonders and welders. These claims present the same issues raised and decided in Award 20543 involving the same parties. For reasons developed more fully in that denial Award the instant claims must likewise be denied.

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.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1974.