

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20799
Docket Number SG-20344

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company that:

(a) The Southern Pacific Transportation Company (Pacific Lines) violated the Agreement between the Company and the Employees of the Signal Department, represented by the Brotherhood of Railroad Signalmen, effective April 1, 1947 (reprinted April 1, 1958 including revisions), and particularly Rules 16, 32, and 33.

(b) Mr. D. R. Wise and Mr. G. G. Shaw be allowed four (4) hours each at their overtime rates for January 15, 1972, 9:00 A.M. to 1:00 P.M.
/Carrier's File: SIG 152-300/

OPINION OF BOARD: On Saturday January 15, 1972 Carrier used two signal gang employees for four hours each at the overtime rate to pick up and deliver an electric switch lock from the Sacramento Signal Shop to the west switch at Gridley, some 60 miles distant, where it was needed for emergency repair work. The work involved herein consisted of loading the signal material into a truck, hauling it to Gridley, unloading the material and returning to Sacramento. Claimants, who are signal maintainers, assert that they were entitled to this work by Rule 16 and implicitly by Rules 32 and 33. Thus, the instant claim for four hours overtime was filed by each on March 11, 1972.

The petitioning Organization, on behalf of Claimants, argues that Rule 16 expressly reserved the involved work to Claimants. Specifically, the Organization asserts that maintenance men on a seniority district have a right to be called under Rule 16 for any emergency work on the entire seniority district, irrespective of whether the work is in their maintenance district or their adjoining maintenance district. In support of this view the Organization cites Third Division Awards 17248, 18138 and 19343.

Carrier has denied the claims primarily upon the ground that the work in question involved merely loading, hauling and unloading and not maintenance work as such, citing Awards 13347, 18060 and 18649. Therefore, Carrier argues that such work is not reserved exclusively to maintenance employees either by express language or by custom, practice and tradition on this property. Moreover, Carrier urges that Awards 17248 and 18138 countenance application of Rule 16 only in the same or adjoining maintenance districts and do not require expansion of the rule on the entire seniority district.

We have considered carefully the arguments advanced, the Agreement language and especially the many Awards cited by each party. Upon such consideration we find numerous sidetracks leading away for the central question herein, viz whether the loading, hauling and unloading of an electric switch lock from the shop to an emergency repair site is maintenance work for purposes of Rule 16. If such is maintenance work then Awards 17248 and 18138 suggest that a sustaining award may be in order. On the other hand, if this is not work reserved to maintenance employees then Awards 13347, 18060 and 18649 call for a denial. It should be noted that numerous Awards have interpreted Rule 16 between these parties but none is foursquare with the fact situation now before us, i.e., where it was necessary for an employee to obtain and deliver signal material during off-duty hours for immediate emergency use.

In the claim letter of May 9, 1972 the General Chairman states:

"On January 15, 1972, junior employees regularly assigned to a gang were called in preference to employees assigned to regular maintenance duties to load and transport material from their assigned area to the Marysville area, for emergency purposes. The gang men were not used for any other work except the loading, hauling, and unloading material."

We find that the instant case most closely parallels those involved in Awards 13347, 18060 and 18649. The former two Awards involved Scope Rule claims but in its essence the instant case likewise reduces to an analysis not unlike that utilized in scope cases. There simply is not evidence in the instant record of Agreement support nor custom and practice that loading, hauling and unloading signal equipment is reserved to maintenance employees. On this ground alone we find it necessary to dismiss the instant claims. It should be noted that in so holding we do not find it necessary to pass on the conflicting contentions regarding the applicability of Rule 16 in districts beyond adjoining districts, nor do we here intimate a view thereon. Finally, we do not herein undermine the validity of Awards 17248 and 18138 in cases where maintenance duties actually are performed. We hold merely that in the instant facts and circumstances we are not persuaded that the loading, hauling and unloading constituted such maintenance duties.

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;

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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

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1975.

LABOR MEMBER'S DISSENT TO
AWARD 20715 (Docket CL-20418)

This Award dismissing the Employees' claim for lack of proof is palpably in error. To arrive at this conclusion, the Referee had to take the several foundations of the claim, separate each from all others, and reason that individually each was insufficient to make a case--thus collectively also they could not make a case.

One is reminded of the brick house analogy: Careful examination of each brick reveals that each alone remains a brick; however, together they make a house.

In the instant case, the separate parts of the Employees' proof standing alone may not have made a complete case, but together they surely did.

Award 20715 is in error and requires dissent.


J. C. Fletcher
Labor Member

May 23, 1975