

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20824
Docket Number SG-20348

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 (former Pacific Electric Railway Company) that:

(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 Southern Pacific track employees to perform work on former Pacific Electric Railway property that is recognized as work performed by the Bonder and Welder.

(b) Mr. L. Burns and Mr. C. Quintana be allowed eight (8) hours at the straight time rate of compensation for a Bonder and Welder for January 4, 1972. /Carrier's File: SIG 152-301/

OPINION OF BOARD: The Organization on March 1, 1972 filed the instant claim on behalf of Messrs. Burns and Quintana alleging as follows:

"On January 4, 1972, the section foreman, of gang in San Bernardino, used the cutting torch repeatedly in order to effect proper fit of rails on G Street, San Bernardino Branch.. Use of cutting torch and all welding on former Pacific Electric property is and has always been performed by the Bonder and Welders."

Carrier's final denial of the claim on the property reads as follows:

"This claim was discussed in conference on June 28, 1972.

The facts are that on date of claim track gang went to G Street to repair a defective rail, bringing with them a short length of repair rail, which had previously been torch cut, date and time unknown. Upon arrival, they used a rail saw to cut out a section of the defective rail of the same length as the repair rail, and inserted the repair rail.

While the defective rail at G Street was cut by rail saw rather than torch in this case, if it had been torch cut,

"such operation could have been accomplished in a few minutes, and no basis would therefore exist for a claim in the amount of eight hours.

The claim is therefore denied."

The record shows that the Maintenance of Way Employees have a third party interest in this dispute. We note that said Organization was afforded due notice of the pendency of this matter and timely filed for our consideration a statement of position. The M of W essentially maintains that a power rail saw was used to cut out a section of defective rail which then was replaced by a short repair rail of the same length, and that there was absolutely no rail welding or torch cutting performed.

We have reviewed in detail the facts of record, the positions of all parties and the many Awards cited. This record simply does not support a finding that the Maintenance of Way forces used a cutting torch in replacing the defective rail on January 4, 1972. Leaving aside innuendo and conjecture there is no probative evidence of a factual basis for the instant claim. Rather, the record supports the conclusion that a power rail saw was used on the date in question on the former Pacific Electric territory. Given these facts we are constrained to dismiss the claim.

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 not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Parker
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1975.