

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22115
Docket Number SG-22235

Rolf Valtin, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Missouri Pacific Railroad Company
(Formerly The Texas and Pacific Railway Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Texas and Pacific Railway Company:

On behalf of Signal Maintainer J. W. LaCour, Terrell, Texas for an additional payment of 5.4 hours at time and one-half the Signalmen's straight time hourly rate of \$6.75 per hour, account Maintenance of Way track forces performing signal work at Terrell and Elmo, Texas on February 4, 1976, in violation of Scope Rule and Rule 62 of the Signalmen's Agreement.

OPINION OF BOARD: The claimant, a Signal Maintainer paid on a monthly-salary basis, seeks the remedial compensation shown in the above "Statement of Claim" for the Carrier's failure to call him out to break and replace bootleg and bond wires in connection with the replacement of a damaged piece of rail on the Carrier's mainline between Elmo and Terrell, Texas. The work in question was performed by the Maintenance of Way employes who did the track-replacement work. The Brotherhood of Maintenance of Way Employes, in response to a notice of the pendency of the dispute, has taken the position that it is "not a party in interest".

The Carrier resists the claim primarily on the grounds that there was an emergency situation justifying not calling the claimant out. We have concluded that the Carrier is seeking an "emergency" application which cannot be sanctioned. On the one hand, there is the fact that the trains could have continued to operate over the trackage, albeit at a reduced speed. And, on the other hand, there is the fact that the claimant was working with the Rail Detector Car which discovered the damaged piece of rail. He was in the area and thus in a position to perform the work in question had he been called out. What we think really happened was that the Carrier did not call him out because it had been unable to make contact with him in connection with a similar piece of work earlier in the day.

There is clear and forceful precedent that the breaking and replacing of bootleg and bond wires, absent a situation of true emergency proportions, is Signalmen's work (Awards 8069, 9614, 11515, 13607, 14210, 14424, 20526 and 20872). We hold that there was a violation of the Agreement in this instance.

We cannot properly conclude, however, that the claimant was monetarily damaged. The claimant, as shown, is paid on a monthly-salary basis. Had he performed the work in question, he would have performed work covered by his monthly salary. In declining to award him the money he is seeking, we are in accord with Awards 20337 and 21414 (involving the very parties which are here involved).

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 Employes involved in this dispute are respectively Carrier and Employes 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 sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1978.