

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26025

Docket Number SG-26092

George S. Roukis, Referee

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

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the
Brotherhood of Railroad Signalmen on the Southern Pacific
Transportation Company (Eastern Lines):

On behalf of Signalmen Ronnie McElwarth, headquartered at Beaumont, Texas, assigned territory Southern Pacific Transportation Company (T&L Lines); assigned hours 7:30 a.m. to 4:00 p.m.; meal period noon to 12:30 p.m.; rest days, Saturdays, Sundays and Holidays.

(a) On August 20-21, 1983, Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope Rule, when it permitted or allowed Maintenance of Way Foreman Bo Madia to perform signal work of watching and refueling generators at the west end of Dayton siding, which were used to supply electricity to the signal system.

(b) Carrier should now be required to pay Claimant Ronnie McElwarth 12 hours at the punitive rate of pay of both days that the violation occurred. (Carrier file 410-46-A)."

OPINION OF BOARD: The Organization contends that Carrier violated the Agreement's Scope Rule when a Maintenance of Way Foreman serviced and watched generators at the west end of Dayton Siding on August 20 and 21, 1983. It asserts that said work accrues to the Signalmen's Craft, since it involved the operation of electrical generators needed to keep way-side train stops and control equipment functioning properly. It also contends that Carrier failed to respond in timely fashion to the instant Claim ostensibly filed on October 9, 1983, since Carrier did not respond within the required 60 days period.

Carrier avers that it did not receive the Claim until January 9, 1984, and accordingly, based upon a discussion between the General Chairman and the Regional Signal Manager, it (Carrier) agreed to waive the time limit and accept the Claim. It asserts that it would be inappropriate for the Organization to contend at this late juncture that a time limit issue was in dispute. It denies violating the Scope Rule, since it argues that an emergency was present on the claimed dates, and it challenges the Organization's position that the Scope Rule reserved to Signalmen the exclusive right to fuel and watch portable electrical generators. It notes that following Hurricane Alicia, which crossed the Texas coast on the western tip of Galveston on August 18, 1983, it was operating under a dire emergency. Specifically, it maintains that it was using a generator at the west end of Dayton Siding to keep the signal battery charged. It observes that it called Claimant on the morning of August 20, 1983 to perform this work, but without avail since he did not answer.

In our review of this case, we concur in part with the Organization's position. We agree with Carrier that the Organization appeared to have abandoned the timeliness question on the property, as evidenced by the appeals correspondence, dated March 10 and April 11, 1984, respectively. The General Chairman's letter of March 10 is silent on this issue. On the other hand, we find Carrier's statement that it tried to contact Claimant first to perform this work a tacit acknowledgment that said work belonged to the Signalmen. This is particularly evident when Carrier premised and justified its action on the basis of a definable emergency. We find that an emergency existed on August 20, 1983, and under these conditions, it was permissible for Carrier to use the Maintenance of Way Foreman, but it was a presumptive violation of the Agreement when Carrier did not attempt to call Claimant to perform the work on August 21, 1983. We will sustain the Claim for August 21, 1983.

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

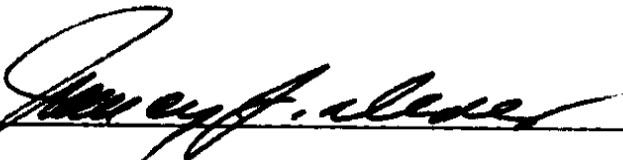
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1986.

