

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31054
Docket No. SG-30164
95-3-91-3-606

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

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

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company:

Case No. 1

"Claim on behalf of L. Griff and M. Van Artsdalen, for payment of eight (8) hours pay, for each of the following days, September 4th, 5th, 6th, 7th, 11th, 12th, 13th and 14th, 1990, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, the Scope Rule, when it allowed or permitted B&B employees to construct signal housing foundations." Carrier's File No. SIG 152-475. G.C. File No. SWGC-232. BRS Case No. 8450-SPTC.SP.

Case No. 2

"Claim on behalf of L. Griff and M. Van Artsdalen, for payment of eight (8) hours pay, for each of the following days, August 27th, 28th, 29th and 30, 1990, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, the Scope Rule, when it allowed or permitted B&B employees to construct signal housing foundations." Carrier File No. SIG 152- 476. G.C. File No. SWGC-229. BRS Case No. 8454-SPTC.SP.

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the

meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Organization submits that the Carrier improperly assigned a bridge and building gang to pour concrete foundations and slabs on various dates. In its Submission, the Organization, for the first time, cites and relies on the Scope Rule.

On the property, the Carrier pointed out that the claim was fatally defective because the Local Chairman failed to cite an Agreement Rule. Moreover, the General Chairman failed to respond to the Carrier's contention in this regard. Stated differently, at no level of appeal on the property did the Local Chairman and/or General Chairman ever respond to the Carrier's contention that the absence of a cited Rule rendered the original claim fatally defective. Thus, the Carrier's procedural objection stands unrefuted.

This Board need not decide if the Local Chairman's failure to cite a Rule, standing alone, would have rendered the claim defective. We do find, however, that when the Carrier takes exception to the Local Chairman's failure to cite a Rule, reiterates its objections several times and then, the Organization's General Chairman fails to respond, the procedural objection prevails.

Therefore, we dismiss this claim.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.