

PUBLIC LAW BOARD NUMBER 1837

Case Number 50

(MW-BRS 77-21)

PARTIES TO DISPUTE:

Norfolk and Western Railway Company

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

1. The Carrier violated the provisions of the Effective Working Agreement dated April 1, 1951, when on September 12, 13, 14, 15 and 16, 1977, it used Signal Maintainer Earl Whiteman who is not covered by the Scope of the Agreement, to purchase material, insulate, and reline the interior of the signal maintainers building at Jewett, Ohio, performing said work for forty hours.
2. The Carrier failed to use Bridge and Building Carpenters Wayne C. Hoskinson and Louis Katona, Jr to perform the Bridge and Building work as indicated above.
3. Bridge and Building Carpenters Wayne C. Hoskinson and Louis Katona, Jr. being available and qualified to perform said work, be compensated for twenty (20) hours each at their respective straight time rates of pay.

FINDINGS: This Board, upon the whole record and all evidence, finds that:

The carrier and the employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

OPINION:

There is no disputing the fact that a Signal Maintainer performed work that was clearly outside his classification -- the erection and insulation of an interior wall within the "Signal Maintainers Building" at the Carrier's Jewett, Ohio facility in September of 1977. At the highest appellant step of the grievance handling procedure, the Carrier disputes the Claim that such work was reserved to the B&B craft, that the Claim was vague, excessive, incorrect and that the Claimants were fully occupied during this period. According to the Organization, some 40 hours of time was expended by the Signal Maintainer to the full knowledge of many people, including the Claimants and that there were other members of the B&B craft on layoff who could have performed such work. The Carrier contends the extent of time used by the Signal Maintainer was only 10 hours and on certain dates different than those claimed. In an argument made first in the submission before this Board, the Carrier asserts that the Signal Maintainer performed such work on his own, i.e. without approval or authority of supervision. In any case, per the Carrier, the Claimants were fully occupied and are merely seeking a windfall.

We find merit for this Claim. It is beyond cavil to assume that the Signal Maintainer did not perform such work with at least the acquiescence of management; we note that no explanation was forthcoming as to how the materials were acquired. We

find such work well within the work jurisdiction of the B&B carpenter craft and conclude that if such work had been properly authorized and assigned, persons of that craft could have been utilized. We are mindful of the Carrier's argument opposing compensation in this case; however, we cannot overlook the, option of using the Claimants at overtime to perform such work or calling laid-off employees for this purpose. Given the blatant nature of the error in assigning or allowing the Signal Maintainer to perform such work, we order compensation. While such payment might arguably be at the overtime rate, we note that the Claim was at the straight time rate. And since we cannot adjudge whether 10 or 40 hours were used in such work, we direct that 20 hours pay at straight time be divided equally between the Claimants.

AWARD:

The Agreement was violated. Compensation is ordered to be paid within 30 days of receipt of a fully executed AWARD as set out in the OPINION.

James F. Searce
James F. Searce, Neutral Member

E. N. Jacobs, Jr.
E. N. Jacobs, Jr.
Carrier Member

William E. LaRue
William E. LaRue
Employee Member

Dated 4/24/82

at Atlanta, Ga