# Award No. 1691
# Docket No. 1585
# 2-C&O-EW-'53

## NATIONAL RAILROAD ADJUSTMENT BOARD
## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.**

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## PARTIES TO DISPUTE:

## SYSTEM FEDERATION No. 41, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Electrical Workers)

## THE CHESAPEAKE AND OHIO RAILWAY COMPANY (Chesapeake District)

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier improperly assigned other than Electrical Workers to perform the work of the Electrical Workers' Craft as covered in their work scope rule in connection with the insulating, bonding and grounding of rails at the Diesel Locomotive Fueling Station, Cheviot, Ohio on May 11th and 18th, 1951.

2. That accordingly the Carrier be ordered to:

a) Compensate Electricians W. P. Hambo, Wm. Jones, Jr., G. L. Bebout and G. S. Todtenbier each in the amount of eight (8) hours' pay at the applicable overtime rate for May 11, 1951.

b) Compensate Electricians R. D. Eads and Francis T. Jones each in the amount of eight (8) hours' pay at the applicable overtime rate for May 18, 1951.

EMPLOYES' STATEMENT OF FACTS: The electricians set forth in 2(a) and (b) of the employes' claim, hereinafter referred to as the claimants, were assigned and did perform the work of installing the electrical equipment at the Diesel Locomotive Fueling Station at Cheviot, Ohio with the exception of the insulating, bonding and grounding of rails.

On May 11 and 18, 1951, the carrier assigned signalmen to perform this electrical work at this fueling station which is not a part of and had no relation to the Chesapeake and Ohio Railway signal system.

The claimants were available to perform this work if assigned or called.

The agreement effective July 1, 1921, as subsequently amended, is controlling.

Nothing in Rules 140 and 141 classify such insulating and bonding as electricians' work.

On the other hand, the evidence definitely establishes that such insulating and bonding of track rails has been and is being performed by signalmen, and therefore has been generally recognized as signalmen's work. Scope Rule 1 of agreement between the carrier and the Brotherhood of Railroad Signalmen of America is as follows:

"RULE 1—SCOPE

This agreement covers rates of pay, hours of service, and working conditions of all employees engaged in the maintenance, repair, and construction of signals, interlocking plants, highway crossing protection devices and their appurtenances, wayside train stop and wayside train control equipment, car retarder systems, including such work in signal shop, and all other work generally recognized as signal work. It is understood the classifications provided by Rules 2, 3, 4, 5, and 6 include all the employees of the signal department performing the work described in this rule."

The saving clause in this rule "all other work generally recognized as signal work", in the light of the established practice, clearly brings the insulating and bonding here in question within the scope of the signalmen's agreement.

As to the employes' claim No. 2: This is a claim for the payment of an additional day at rate and one-half to each of the employes named as a penalty payment for work done by others which the electricians claim should have been done by that craft. Those named for whom the claim is made each worked their full eight hour tour of duty on the day of claim, for which they were paid eight hours at straight time. There is no rule in the shop crafts agreement which provides for such a penalty payment, either at straight time or at rate and one-half.

Had the work in question belonged to the electricians, overtime would not have been worked by the electricians, but the work would have been done by electricians drawn from the force during regular working hours.

On the merits of this case, carrier submits:

1. That there has been no violation of any shop crafts agreement rule in the assignment of the work in question, but that on the other hand, the work was assigned in accordance with the signalmen's rules;

2. That there is no rule upon which the employes can justify a punitive payment of a time and one-half day in addition to their regular daily compensation on their assignments on the dates for which claim is made; and

3. That the claims in their entirety should be declined.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

The Electrical Workers of System Federation No. 41 contend carrier violated its agreement with them when it failed to have them do the work of insulating, bonding and grounding rails at its Diesel Locomotive Station at Cheviot, Ohio, on May 11 and 18, 1951. They ask that carrier, because thereof, be required to compensate Electricians W. P. Hambo, Wm. Jones, Jr., G. L. Bebout and G. S. Todtenbier for eight hours at time and one-half for May 11, 1951, and Electricians R. D. Eads and Francis T. Jones the same for May 18, 1951.

The work here involved was the insulating, bonding and grounding of the rails at carrier's unloading and fueling tracks used in connection with its diesel locomotive fuel oil unloading, storage and fueling facilities at Cheviot, Ohio. The principal reason for insulating such unloading and fueling tracks is to prevent static electricity from interfering with signal circuits while the bonding and grounding thereof is done primarily to prevent any damage by fire from static electricity which is often generated by the flow of the liquids being handled.

Carrier contends this claim cannot properly proceed to a decision on the merits and, therefore, should be dismissed, because no notice has ever been given to the Brotherhood of Railroad Signalmen of America.

For a better understanding of this issue we set forth that part of the Railway Labor Act on which carrier bases this contention, which is Section 3, First (j):

> "Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them."

Even if we were inclined to agree with carrier that this provision of the Railway Labor Act requires that this Division should have given a notice to the Brotherhood of Railroad Signalmen of America of all hearings held before it on this dispute, we could not agree that our failure to do so would now be grounds for dismissing the claim. If and when it is determined that such notice is required, the giving thereof becomes solely a ministerial duty to be performed by the Division with which a dispute has been properly lodged. There is no provision in the Railway Labor Act giving authority for such notice being given on the property while the dispute is being handled there. To dismiss the claim is in effect to deny it. If and when a Division decides such a notice should be given, then it should do so and retain jurisdiction of the dispute and make an ultimate disposition thereof on its merits after such notice has been given. Surely, no employe or employes of any carrier should suffer defeat of his or their rights solely because any Division of the Adjustment Board has failed to perform its ministerial duties.

Coming then to the question of whether or not notice should now be given to the Brotherhood of Railroad Signalmen of all hearings on this dispute. For the reasons fully discussed in Awards 1359 and 1628 of this Division and Awards 2253, 5702, and 6203 of the Third Division, we think it should not.

We will not again repeat what was fully discussed in those awards except to state that the following language of Award 5702 is here applicable:

> "In view of the foregoing we find that groups or classes of employes or the organization which represents them, of which a division of the Adjustment Board is not given jurisdiction, are neither necessary nor proper parties to a dispute properly before it arising out of an interpretation and application of an agreement between a class of employes and a carrier of which the division does have

jurisdiction. Consequently, the requirements of Section 3, First (j), that: '. . . the several divisions of the Adjustment Board shall give due notice of all hearings to the employe or employes and the carrier or carriers involved in any disputes submitted to them,' does not apply to them."

In January of 1950, carrier, near its roundhouse at Cheviot, Ohio, installed a diesel locomotive fuel oil unloading, storage and fueling facility, including pumping equipment and unloading tracks. In making this installation, carrier had its electricians install the electrically operated pumping equipment and, while doing so, bond and ground the rails of the unloading and fueling tracks. In the summer of 1950, when it rebuilt the roundhouse into a diesel house, it changed the location of this diesel fuel oil unloading and fueling facility. In doing so, it again had its electricians install the electrical pumping equipment and, while doing so, bond and ground the rails of the unloading and fueling tracks.

In January, 1951, carrier made an inspection of this facility. As a result thereof, it came to the conclusion that the insulation, bonding and grounding of the rails of the unloading and fueling tracks thereof were not up to the standard of its specifications therefor. It then had its Signal Department employes, assisted by track forces, insulate, bond and ground the rails of the unloading and fueling tracks used in connection with this facility. This is the work the electricians claim the carrier should have had them perform.

Since this carrier has no classification of employes called Linemen and since Linemen's work is being performed by Electricians, the work covered by Rules 140 and 141 of the parties' agreement all belongs to the Electricians.

A careful study of these two rules discloses that the work here involved does not come within any of the specific categories therein set forth, nor do we think it can be said that it is incident to any of the specific items of work therein described. In view of that fact, if it can be claimed by the Electricians, it must come within the following language thereof:

". . . all other work generally recognized as electricians' work."

or

". . . other work properly recognized as linemen's work."

We said of like language in Award 1554 of this Division that:

"This language is subject to the principle that carrier can continue to have work covered thereby performed in the same manner as it was customary to have it done at the time the agreement, of which the rule is a part, became effective. That is, such language does not abrogate past practices."

It is fundamental that a practice, once established, remains such unless specifically abrogated by the contract of the parties. The question then is, what was the past practice of this carrier as to insulating, bonding and grounding the rails of its liquid fuel oil unloading and fueling facilities? The insulating thereof appears to have always been done by track forces under the supervision of Signal Department employes. Bonding has usually been done by signalmen except in a very few instances when it has been done by electricians in connection with their installing the electrical equipment of the facility. Grounding has generally been done by electricians when done in connection with the installation of the electrical equipment when such facilities are being installed, but otherwise by signalmen. Under these practices, the electricians had no right to any of the work done by Signal Department employes on either May 11 or 18, 1951. Consequently, the claim here made is without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1953.