

Award No. 5644

Docket No. 5546

2-NP-EW-'69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current agreement by assigning others than Electrical Workers to perform Electrical Workers' work on September 9, 1965.

2. That Wiremen J. H. Bednar and M. G. Brenno be compensated for eight (8) hours' pay for work which they should have been called upon to perform on the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: At Kirkland, Washington, on the date of September 9, 1965, a signalman and signal helper installed a 220 volt, single phase service and meter loop for an automatic highway crossing signal protection device. A Washington State Safe Wiring Permit No. 53867 was purchased by F. V. Sloop, Supervisor, Signal Department, Northern Pacific Railway Company, on the date of September 8, 1965. Carrier's AFE No. 355-65 was authorized for Work Order No. 4766.

M. G. Brenno and J. H. Bednar, wiremen for the Electrical Engineering Department of the Northern Pacific Railway, hereinafter referred to as the Claimants, filed time claims for eight (8) hours' pay each for the date of September 9, 1965. (Claims were filed separately, but have been combined into this instant claim for more expeditious handling.)

This dispute has been handled with all officers of the Northern Pacific Railway Company, hereinafter referred to as the Carrier, designated to handle such disputes, including the highest designated officer of the Carrier, all of whom have declined to make satisfactory settlement.

The Agreement of July 1, 1955, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: The Employees respectfully submit to the Honorable Board that the Carrier erred when it assigned other than Elec-

the Signal Department cable post to the cabinet located at the base of this post. The Employes have just not met this burden of proof.

A review of Rule 94 of the July 1, 1955 Shop Crafts Agreement makes it manifestly clear that the work of installing the electric wiring from the top of the Signal Department cable post to the relay housing located at the base of the post does not inure to wiremen under Rule 94 of the July 1, 1955 Shop Crafts Agreement.

A survey of the practice by this Carrier in the installation of meter loops clearly establishes the fact that by practice wiremen have not acquired a monopoly over the performance of such work. Therefore, on the basis of the record in this docket, the Carrier respectfully requests that the claim covered by this docket be denied.

(Exhibits not reproduced.)

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.

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

On September 9, 1965, at Kirkland, Washington, a signalman and signal helper installed at 220 volt, single phase service and meter loop for an automatic highway crossing signal protection device. This work involved making a connection from the service drop wires at the top of a cable post and then extending these connections into the relay housing located at the base of the cable post. The record discloses that proper notice of this dispute was served on the Brotherhood of Railroad Signalmen and their response is hereby acknowledged.

The Organization in this dispute contends that the Electrical workers are the rightful owners of this work because of the "Classification of Work" Rule 94(a). This rule recites that Electricians' work shall consist of, among other items, the installation of meters; inside and outside wiring on structures and all conduit work in connection therewith including light and power cables.

Carrier represents to this Board its contention that neither the Electricians' Organization nor the Signalmen's Organization have established an exclusive right to perform the work involved in this dispute, and that, therefore, this work may be performed by either at the discretion of the Carrier. In support of this contention, Carrier has documented, in their Exhibit B, the number of times, from January 1, 1962 to January 1, 1967, the number of meter loops installed by electricians and the number installed by Signalmen. The Signalmen's Organization, in its Exhibits 1, 2 and 3, has documented the same type of statistical information. These documentations have not been disputed by Claimants' Organization and show conclusively

that by custom, practice and tradition, Carrier has used its discretion in assigning the type of work involved in this dispute to both Electricians and Signalmen.

The Signalmen's Organization cites Scope Rule 1 of their Agreement to support their contention that this work belongs to Signalmen. "Scope Rule 1" of the Signalmen's Agreement and "Classification of Work Rule 94(a)" of the Electricians' Agreement are both general in nature. Also, these two rules are overlapping, and, in this respect, are conflicting. This Board is of the opinion that in considering overlapping or conflicting rules, one rule cannot be considered to the exclusion of the other, and in order to give the entire Agreement the proper interpretation, we must turn to custom, practice and tradition. By considering the past practice on this property, this Board finds that the work involved in this dispute does not belong exclusively to either the Electricians or the Signalmen, and that, therefore, this work may be assigned to either.

For the foregoing reasons, and in keeping with Awards 4990 (Hall), 5300 (Weston), 5509 (Ives) and 5578 (Ives), this Claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 20th day of March, 1969.