Award No. 5781
Docket No. 5650
2-AT&SF-EW '69

NATIONAL RAILROAD ADJUSTMENT BOARD

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO
(Electrical Workers)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
(Coast Lines)

DISPUTE: CLAIM OF EMPLOYES:

1. That the Atchison, Topeka and Santa Fe Railway Company violated the rules of the current agreement when it assigned employes of the Signal Department to perform work that is covered under the Electrical Workers Agreement.

2. That accordingly, the Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Shop Extension Electricians James E. Jeter and Michael J. Maguire, each in the amount of twenty-four (24) hours at their applicable overtime rate of pay for this violation.

EMPLOYES' STATEMENT OF FACTS: Electricians James E. Jeter and Michael J. Maguire, heerinafter referred to as the claimants, are monthly rated electricians regularly employed by the Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the carrier, with headquarters at Redondo Junction, located in downtown Los Angeles, California. The claimants have an assigned work week of Monday through Friday.

On or about January 6, 1966, the carrier assigned employes of the signal department to install three (3) 25 foot poles, meter loops, which consisted of meter base, entrance switches, weather head, ground, conduit and associated and necessary wiring at the location of Euclid Avenue, Pasadena, California and like installation at Walnut and Santa Anita Avenues, on February 7, 1966, and a like installation at Walnut and Daisy Avenues, on or about February 18, 1966.

This dispute has been handled with the carrier, up to and including the highest officer designated to handle such matters, with the result that all have declined to make a satisfactory settlement.

The agreement effective August 1, 1945, as subsequently amended, is controlling.

the signalmens work extends to the switch box, but certainly no further than the crossarm connection. Therefore, the question concerns that work between the switch box and the crossarm.

The Carrier argues that the point of utilization is at the base of the switch box. The employes allege that it is where the power is delivered from the utility power line. We agree with the Organization.

In this decision we are impressed with the fact, that but for the signal system, there would be no need for the meter or switch box. Case 11973 is distinguished in this regard, in that the utility pole was also used for other than signal purposes.

Therefore, we hold that the language of the Scope Rule in this signalmen's agreement, is sufficiently unambiguous to permit an interpretation of, 'appurtenances and appliances', which would include the work performed in the instant claim.

We award signalmen E. L. Manning and F. Sanders, Jr. each eight (8) hours pay at their pro rata rate for Tuesday, March 25, 1958.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim sustained."

* * * * *

"OPINION OF BOARD: The principles involved in this case are identical with those in Docket SG-12187, Award No. 12697. The decision in said prior award is controlling and hereby adopted in this case.

Signalmen B. W. Lang and R. N. Snodderly are each awarded eight (8) hours pay at their pro rata rate of pay for March 12, 1958.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over dispute involved herein; and

That the Agreement was violated.

Claim sustained."

On January 6, February 7 and 8, 1966, the dates involved in the instant dispute, additional highway crossing protection devices were installed at Euclid Avenue, Santa Anita Avenue, and Daisy Street crossings of the carrier's main line at Pasadena, California. To effect these installations, work identical to that previously performed at Hesperia and Los Angeles was undertaken; and, in view of the findings of awards 12697 and 12698 of the Third Division, the carrier apportioned all work in connection with these installations to employes represented by the Brotherhood of Railroad Signalmen.

As a matter of record, Claimants James E. Jeter and Michael J. Maguire were fully employed on each claim date. In addition, the actual time required to install the meter assemblies on each of the poles did not exceed eight (8) hours, totalling twenty-four (24) hours.

The claim in the instant dispute was initially presented to the respondent carrier's manager — mechanical department, Mr. H. F. Mackey, in letter dated March 3, 1966. Claim was declind by Mr. Mackey in letter dated March 21, 1966, appealed to the carrier's general manager on April 22, 1966, and following an agreed-to extension of the time limit within which he had to render a decision, the general manager declined the claim in letter dated August 17, 1966. The petitioning organization then appealed the claim to carrier's assistant to vice president and highest officer of appeal, Mr. O. M. Ramsey, on September 27, 1966, being denied in Mr. Ramsey's letter dated December 23, 1966. An agreed-to extension of the time limit was made pending discussion of the claim in conference, during which time further correspondence developed between the carrier and organization.

In handling this dispute on the property, the petitioning organization cited Rules 29(a) and 92 of the general agreement effective August 1, 1945, which read as follows:

"ASSIGNMENT OF WORK

Rule 29.

(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft. This rule does not prohibit foremen in the exercise of their duties, or foremen at points where no mechanics are employed, to perform work."

"CLASSIFICATION OF ELECTRICIANS

Rule 92.

Electricians' work shall consist of maintaining, repairing, rebuilding, inspecting and installing the electric wiring of all generators, switchboards, meters, motors and controls, rheostats and controls, motor generators, electric headlights and headlight generators, electric welding machines, storage batteries, axle lighting, automatic train control electrical equipment, radio equipment on locomotives and cars, electric clocks and electric lighting fixtures; winding armatures, fields, magnet coils, rotors, transformers and starting compensators; inside and outside wiring at Shops, buildings, yards, and on structures, and all conduit work in connection therewith, including steam and electric locomotives, passenger trains,

rail motor cars, electric tractors, and trucks. Electric-cables, cable splicers, high tension power house and sub-station operators, high tension linemen, electric crane operators of 40-ton capacity or over; and all other work generally recognized as electricians' work.

MEMO NO. 1: Any line and pole work which is to be handled by Mechanical Department forces will be done by electricians and helpers."

POSITION OF THE CARRIER: Since the instant dispute directly involves the continued right of the carrier's signal department employes, represented by the Brotherhood of Railroad Signalmen, to continue to install meter and meter boxes which may hereafter be placed in service, it will be apparent that the carrier's signal department employes and their duly authorized representatives, i.e., the Brotherhood of Railroad Signalmen, have rights that might be adversely affected by any award that is rendered in the instant dispute and are, therefore, interested parties in the instant dispute and are entitled under Section 3, First (j) of the amended Railway Labor Act to receive notice of the pendency of the instant dispute.

Since the carrier's signal department employes and the Brotherhood of Railroad Signalmen have not, to the carrier's knowledge, been given notice of the pendency of the instant dispute, nor afforded an opportunity to appear and be heard, the Carrier respectfully asserts that in the absence of such notice as required by law, the Second Division is without authority to consider the instant dispute. The third party requirement is so well established that the carrier will not burden the record herein with citations on the subject.

Additionally, it is the carrier's position that this Board is obligated under **Transportation-Communicaton Employees Union v Union Pacific, — U.S. —, 17 L. Ed. 2d 264.271 (1966)** to give the Brotherhood of Railroad Signalmen notice and an opportunity to be heard, and whether or not they avail themselves of the opportunity, to resolve the entire dispute upon consideration not only of the contracts between the carrier and the two unions, but also upon consideration of evidence as to usage, practice and custom. A failure to give such consideration would be contrary to the above-cited case and would deprive the Brotherhood of Railroad Signalmen and the carrier of both procedural and substantive due process of law contrary to the Constitution of the United States.

Without prejudice to its position as hereinbefore stated, it is carrier's further position that petitioner's claim in the instant dispute is wholly without merit or support under the governing agreement rules and should be denied for the reasons hereinafter expressed.

First. The allocation of all disputed service was properly apportioned to Signal Department employes in accordance with the Findings of Third Division Awards Nos. 12697 and 12698.

In its argument regarding claims in dispute identified in Third Division Dockets Nos. SG-12187 and SG-12188, the Brotherhood of Railroad Signalmen based their position on the principle allegation that shop extension department employes were required to install 110-volt meter service connections for commercial power for crossing gates and flasher signals and signal circuits, and that such work belonged to signal department employes. That work, as in the instant dispute, consisted of installing fuse boxes, ground rod and connections, mounting for meters, and wiring up poles set by signalmen

for power connection. The petitioning signalmen's organization referred to the scope rule of their agreement in support of the claim. In this connection, carrier argued in part, see Docket No. SG-12187:

"The Employes allege a violation of the Scope of their Agreement. The Scope Rule of the Signalmen's Agreement, effective October 1, 1953, reads:

'SCOPE

This Agreement governs the rates of pay, hours of service and working conditions nf employes in the Signal Department, including foremen, who construct, install, maintain and/or repair signals, interlocking plants, wayside automatic train control equipment, centralized traffic control, automatic highway crossing protective devices, including all their appurtenances and appliances, or perform any other work generally recognized as signal work.

The classifications as enumerated in Article I include all the employes of the Signal Department performing the work referred to under the heading of "Scope".'

The Scope Rule of the Signalmen's Agreement as quoted above first appeared in the Signalmen's Agreement effective June 1, 1939. Prior to that time it was expressed in even more broad and general language. It read:

'SCOPE

This agreement shall apply to employes classified in Article I performing the work generally recognized as signal work.'

Section I of Article I of that Agreement is the Classification of Signalmen and Signal Maintainers rule and reads:

'Section I—SIGNALMAN, SIGNAL MAINTAINER — A man qualified and assigned to perform work generally recognized as signal work, shall be classified as a signalman or signal maintainer.'

It will therefore be seen that the Scope Rule of the Signalmen's Agreement does not now, nor has it ever included any reference whatever to the installation of meters, meter circuits or safety switch boxes, nor does it contain any definition whatever of signal 'appurtenances and appliances.'

General Chairman Lewis, in his appeal letter to Assistant Vice President Comer of June 30, 1959, quoted in the 'Carrier's Statement of Facts', said:

'***. The meter service is used for the sole purpose of charging signal betteries and to feed signal circuits, and **is a necessary appliance for the operation of the signal circuits** at the location.' (Emphasis added)

thus making it clear that the Employes' claim in the instant dispute is based on a contention that the meter installation is a neces-

sary appliance to the signal installation and therefore comes within the coverage of their Scope Rule by reason of the reference in that Scope Rule to 'appurtenances and appliances'. Such is not the case. The meter was installed as a requirement of the Power Company for the sole purpose of measuring, for billing purposes, the electric power sold to the Carrier and the safety switch box with its grounding facilities was a requirement of the governing regulations or 'codes'. All of the so-called 'meter installation', made by the Carrier's Shop Extensions employes, was therefore a requirement of the Power Company and the governing State and City regulations. No part of that 'meter installation' contributes anything to the operation of the signal installation, nor is it necessary to the operation of the facility. That facility, except for the Power Company and State and City requirements, would operate perfectly without any part of the so-called 'meter installation'. It is therefore obvious that the 'meter installation' was not a necessary appurtenant or appliance of the signal installation as contemplated by the Scope Rule."

The carrier's position was not upheld as evidenced by Third Division Award No. 12697 quoted in carrier's statement of facts, wherein the Board found in part:

"*** it appears that the most significant question to be determined concerns an interpretation of the clauses in the Scope Rule which read, 'automatic highway crossing protective devices, including all their appurtenances and appliances.'

* * * * *

Therefore, we hold that the language of the Scope Rule in this signalmen's agreement, is sufficiently unambiguous to permit an interpretation of, 'appurtenances and appliances', which would include the work performed in the instant claim."

Therefore, subsequent to the issuance of Award No. 12697, dated June 30, 1964, the carrier had no alternative but to assign all work in connection with the installation of meters, etc., when used in connection with "automatic highway crossing protective devices", to signalmen represented by the Brotherhood of Railroad Signalmen.

Should the board find in favor of the petitioning organization, the carrier would unquestionably be placed in a rather unique position, i.e., "pay a penalty if you do and pay a penalty if you don't." To require electricians to perform any of the installations in question would result in nothing less than a non-compliance with Third Division Awards Nos. 12697 and 12698; and, to apportion such work to employes represented by the Brotherhood of Railroad Signalmen as required by those awards, would result in yet another penalty situation, the carrier then being in an untenable position.

The organization would have this board disregard provisions of the Brotherhood of Railroad Signalmen's agreement, as interpreted by Awards Nos. 12697 and 12698, when in reality the board is empowered with the authority to give credence to other divisions' findings. See this division's award 3871 (Referee Charles W. Anrod) reading in part:

"***our authority does not compel us to ignore the existence of the Signalmen's Agreement and the interpretation given it by the

Third Division***. See Order of Railway Conductors of America v. Pitney, 326 U.S., 561, 566-7; 66 S. Ct. 322, 325 (1946) and cases cited therein. Accordingly, the Sheet Metal Workers' Agreement cannot be read and understood alone in matters which raise a question of overlapping contractual work rights of the type here involved. There must be an accommodation of that Agreement and the Signalmen's Agreement for the purpose of defining the respective scope of the two agreements and, thereby, giving effect to the evident aim and intention of each."

Second. By failing to appear before the Third Division in Dockets Nos. SG-12187 and SG-12188, Petitioner acquiesced to have that Board establish Signalmen's right to the work which it did in Awards 12697 and 12698.

Section 3, First (j) of the Railway Labor Act provides:

"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 employes and the carrier or carriers involved in any dispute submitted to them."

In construing Section 3(j) of the Railway Labor Act, the courts have steadfastly held that awards rendered by the various divisions of the National Railroad Adjustment Board are void and of no effect where notice required thereby to interested parties has not been given and where such interested parties have not been given an opportunity to be heard. In addition, numerous awards of the National Railroad Adjustment Board recognize the necessity of such notice; and, the court decisions on which those awards are based still represent the established law. The carrier would refer the board to Third Division Awards Nos. 5432, 5433, 5600, 5702, 5785, 6051, 6052, 6072, 6224, 6402, 6482, 6484, 6485, 6680, 6682, 6696, 6799, 6812, 6813, 7975, 8022, 8023, 8050, 8200, 8258, 8326, 8328, 8378, 8379; and, Second Division Awards Nos. 1523, 1525 and 2698.

Following the requirements of the board's and court's decisions, Executive Secretary Schulty of the Third Division, National Railroad Adjustment Board, notified International Vice President J. J. Duffy and General Chairman E. F. McLennan of the Electrical Workers' on February 14, 1961, of the pendency of the disputes which subsequently resulted in Third Division Awards Nos. 12697 and 12698. Although the electrical workers were given notice of the hearings, they made no appearance.

Inasmuch as the International Brotherhood of Electrical Workers was given due notice by the executive secretary of the Third Division of the pendency of the disputes, and elected not to appear nor to be heard before the Third Division on March 14, 1961, the International Brotherhood of Electrical Workers tacitly conceded to signalmen represented by the Brotherhood of Railroad Signlamen the right to make the electrical installations involved in the instant dispute. The petitioning organization might well argue that their failure to appear and/or be represented did not constitute a waiver of such rights. However, the Third Division, for example, has held to the contrary.

Award No. 12852: (Referee William H. Coburn)

"The record here shows that notice of the pendency of this dispute was served on the Brotherhood of Railway Clerks in accordance

with the requirements of Section 3, First (j) of the Railway Labor Act. That Organization declined to participate in these proceedings. Accordingly, the Board may properly consider the dispute on the merits."

Award No. 9753: (Referee Raymond E. LaDriere)

"Some question was raised about proceeding in the absence of the Brotherhood of Railway and Steamship Clerks; the record shows that notice was given to that Organization on August 10th, 1960, which has failed to appear although it did inform the Secretary of this Division that it was not involved in this dispute. Since it appears that due notice has been given, and even acknowledged, the matter is now properly at issue and our determination will be binding on the parties."

Award No. 12656: (Referee Don Hamilton)

"First, the Carrier raised the question of the Third Party Issue. It is the opinion of the Board that the prevailing practice concerning this question is sound, and should be approved as conforming to the requirements of the courts. Such practice is to give notice of the claim to the representative of the Third Party so that it may appear, if it so desires, to participate in the case.

In this case, the Third Party representative entered what amounts to a waiver. This is apparently sufficient to satisfy the requirements of notice, removing the issue from our consideration, and allowing the case to proceed on its merits."

Award No. 10303 (Referee Richard F. Mitchell)

"As the record indicates, the Division gave notice to the Train Dispatchers' Organization, as an interested third party, of the pendency of this dispute and of a hearing held on June 6, 1961, in accordance with Section 3, First (j) of the Railway Labor Act.

The Train Dispatchers' Organization failed to appear, although it did inform the Secretary of this Division that it was 'not involved' in the dispute.

Regardless of the position taken by the Train Dispatchers' Organization and since it appears that due notice has been given 'to all parties involved in the proceedings,' as directed by the Railway Labor Act, the matter is now properly at issue and our determination will be binding upon the parties involved. See Award 8330."

See also, Awards Nos. 9759, 8496, 8497, 9778 and 10515 among others.

Third. The matter is res judicata.

The carrier respectfully submits that once an award has been rendered by the National Railroad Adjustment Board, it is final and binding and constitutes a final determination of a particular issue or dispute covered thereby regardless of whether the claim was sustained, denied, dismissed, or even dismissed without prejudice. The carrier submits further, that once an award has been rendered, and regardless of whether the issue or dispute covered thereby was sustained, denied, dismissed, or dismissed without prejudice, that particular issue or dispute is dead and cannot be resubmitted to the board. In other words, as applied to the instant dispute, petitioner cannot

request this division to render a decision that might be contrary to a decision rendered by another division (Third) inasmuch as the issue or dispute in question has already been adjudicated and must be considered final and binding. This conclusion is based on Section 3 First (m) of the Railway Labor Act and the principle of res judicata.

The principle of **res judicata**, as pertaining to awards of the National Railroad Adjustment Boards, have primarily been concerned with the resubmission of identical disputes by originating parties to a specific division. However, the principle of **res judicata** is not restricted to awards within specific divisions of the board. Third Division Award No. 8458 held in part:

> "***The Board, as a matter of law and sound public policy, ought to adhere to the rule of **res judicata**. The law declares 'The awards of the several divisions of the Adjustment Board*** shall be final and binding upon both parties to the dispute***."

In Fourth Division Award No. 990 (Referee Ferguson) it was held that a prior First Division award reinstating a dismissed employe was **res judicata** and a bar to the subsequent claim before the Fourth Division for pay for time lost. Noting the provisions of Section 3, First (m) that the awards of the various divisions shall be "final and binding", it was held that the defense of **res judicata** was appropriate and conclusive. It was there stated as follows:

> "The thing sued for, the party suing, the party being sued, the facts presented, the rights claimed, and the defenses made were all decided in Award 15510 by the First Division, a tribunal having jurisdiction and whose decision by law is final and binding. All the same factors are again presented here and we are of the opinion that the thing has been judged, which is the literal meaning of res judicata."

Third Division Awards Nos. 12697 and 12698 found that electrical work identical to the work in question belonged to signalmen represented by the Brotherhood of Railroad Signalmen; therefore, inasmuch as the question at issue in the instant dispute has been adjudicated, the principle of **res judicata applies.**

Without prejudice to its position as previously stated herein that the claim should be either dismissed or denied, the carrier further asserts that the claim is for an excessive number of hours since Signal Department employes spent time not in excess of eight (8) hours performing the complained of service on each of the three job sites. This fact was pointed out to General Chairman McLennan on several occasions.

Carrier further states that each of the claimant employes was regularly assigned and working full time while the complained of service was being performed and therefore suffered no monetary loss by reason of the handling given.

In conclusion, the carrier states that the employes' claim in the instant dispute should be either dismissed or denied for the reasons expressed herein.

STATEMENT OF FACTS: This dispute arose because carrier assigned signal employes to install 25 foot poles and meter loops necessary for and integral parts of the highway grade crossing signal installations which such employes were making during January and February, 1966, in Pasadena, California, at Euclid, Walnut and Santa Anita, and Walnut and Daisy Avenues.

The meter loops were for the most part assembled and mounted on 25 foot wooden poles in the San Bernardino signal shop. The signalmen who set these poles at the street crossing locations did nothing more than run the ground connections and make the necessary connections at the "points of utilization." After this was done the power company in Pasadena ran its service to the "points of connection' and installed the meters.

There meter loops were installed expressly for and serve no purpose other than to provide current for lighting and battery charging circuits for signal equipment used in the grade crossing protection installations.

The crossing signal installations were made exclusively by signal employes, and such work is covered by the scope rule of their agreement, which reads:

"SCOPE

> This Agreement governs the rates of pay, hours of service and working conditions of employes in the Signal Department, including foremen, who construct, install, maintain and/or repair signals, interlocking plants, wayside automatic train control equipment, traffic control systems (TCS), **automatic highway crossing protective devices, including all their appurtenances and appliances;** also electrically controlled car retarder devices, train order signals, electric signal and switch lamps, switch heaters connected to or through signal systems, hot box, high water, dragging equipment and slide detectors connected to or through signal systems; static protection installations, wayside automatic train stop (ATS), or perform any other work generally recognized as signal work performed in the field or signal shops.
>
> When signal circuits are handled on communications systems of other departments, the employes covered by this Agreement shall install and maintain the signal circuits leading to and from common terminals where signal circuits are connected with other circuits.
>
> The classifications as enumerated in Article I include all the employes of the Signal Department performing the work referred to under the heading of 'Scope'."

No. 1 shows the entire pole with its crossarm and the crossing signal appurtenances and appliances in place. No. 2 shows the meter box with the meter installed and the switch box with ground connection in place on the pole. This exhibit also shows the lead-in conduit from the Power Company wires on the crossarm into the top of the meter box, the conduit connection between the meter box and the switch box, and the conduit from the switch box — the point of utilization — to the foot of the pole, thence underground to the instrment case. No. 3 shows the interior wiring of the meter box, and No. 4 shows the lower part of the meter box, the conduit connecting the meter box with the switch box, the interior wiring of the switch box, the ground connection conduit and the conduit leading from the switch box — the point of utilization — to the instrument case.

Signal employes, either in the San Bernardino Signal Shop or at the Pasadena locations, performed all work connected with installing the electrical apparatus —— crossing signal appurtenances and appliances — similar to that shown attached to the pole in Brotherhood's Exhibit No. 1, except that of

bringing the Power Company's wires to the points of connection on the crossarm, the insertion of the Power Company's meter in the meter box, and making the connection between the Power Company's wires and those belonging to Carrier at the end of the crossarm.

POSITION OF THE BROTHERHOOD OF RAILROAD SIGNALMEN:

The Scope of the signalmen's agreement, controlling in this dispute, specifically covers the construction, installation, maintenance and/or repair of automatic highway crossing protective devices, including all their appurtenances and appliances.

In the instances about which the Electrical Workers complain in this dispute, it is the position of the Brotherhood of Railroad Signalmen that carrier correctly applied the provisions of the aforequoted Scope Rule and properly assigned the work of constructing the meter loops and their installations to signal employes covered by this scope rule.

In addition to the scope rule language which has been cited herein, brotherhood offers in support of its position the following from **Award No. 12697:**

> "Although this record is burdened with many unimportant, quasi-collateral issues, it appears that the most significant question to be determined concerns an interpretation of the clauses in the Scope Rule which read, 'automatic highway crossing protective devices, including all their appurtenances and appliances.'
>
> Some of the prior cases, in related areas, have held that this language is ambiguous and therefore the issues have been decided on the basis of past practice and custom. Other cases have held that such language was sufficiently certain as to either include or exclude the particular matter under consideration.
>
> In the instant claim there is sufficient evidence to indicate that the employes theory of having the exclusive right to the work on the basis of custom or past practice is not applicable, since it is evident that both signalmen and electricians have performed the work in the past. However, such past practice is not controlling in view of the interpretation of the Scope Rule, that such devices unambiguously come within the terms, appurtenances and appliances. In our opinion, these words, when applied in this case, call for such a conclusion.
>
> Prior cases have established the signalmen's authority or lack of same, in various areas of signal installations. This has resulted in a narrowing of the controversal areas. This case presents one of the last gaps in the installation process. It is admitted that the signalmens work extends to the switch box, but certainly no further than the crossarm connection. Therefore, the question concerns that work between the switch box and the crossarm.
>
> The Carrier argues that the point of utilization is at the base of the switch box. The employes allege that it is where the power is delivered from the utility power line. We agree with the Organization.
>
> In this decision we are impressed with the fact, that but for the signal system, there would be no need for the meter or switch box.

Case 11973 is distinguished in this regard, in that the utility pole was also used for other then signal purposes.

Therefore, we hold that the language of the Scope Rule in this signalmens agreement, is sufficiently unambiguous to permit an interpretation of, 'appurtenances and appliances,' which would include the work performed in the instant claim."

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 were given due notice of hearing thereon.

Signal Department employes of the Carrier installed 3 meter loops in connection with crossing protection devices at three locations in Pasadena on January 6, February 7, and 18, 1966.

The Claimants are Shop Extension Electricians and allege that the work performed is covered by the Electrical Workers' Agreement and as such, since Signal employes performed it, the Electrical Agreement has been violated.

A Third Party Notice has been given to the Signalmen's Organization and a response has been received indicating that they view the work in question to be their work.

The Carrier in the instant case based its decision for the assignment of the work to the Signal rather than to the Electrical employes, on Third Division Awards Nos. 12697 and 12698.

We have examined those awards and cannot find wherein they are demonstrably erroneous. On the contrary, we agree with the reasoning and conclusion of those awards. Hence, in the interest of STARE DECISIS, we will affirm the position of the Carrier and deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 24th day October, 1969.

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