Award No. 4593
Docket No. MW-4538

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the agreement on December 31, 1947 and January 1, 1948, by assigning the work of removing snow from switches at Kansas City to Signalmen having no seniority in the Track Department instead of assigning Section Foreman Harold Howe and Section Laborer Joe Shepherd;

(2) That these two claimants each be paid fourteen (14) hours pay at their respective rates of pay as provided for in the overtime rules of the agreement.

EMPLOYES' STATEMENT OF FACTS: On December 31, 1947 Section Foreman Harold Howe was working four regular Section Men and five extra men for Extra Gang No. 2, cleaning snow from tracks and switches and at 4:30 P.M., the regular quitting time for the gang, Section Foreman Howe was instructed to leave two of his regular Section Men on the job to work all night to assist two Signal Men assigned from the Signal Department in cleaning snow and ice from switches. The Management releasing Section Foreman Howe, Section Laborer Shepherd and his five extra men from overtime services. The two Signal Men retained for cleaning snow from switches and the two Section Laborers retained to assist them, worked overtime from 3:30 P.M. to 7:30 A.M. the morning of January 1, 1948 cleaning snow from the interlocking switches.

These two Signal Department employes retained for snow duty were in addition to the regular second trick assigned Signal force.

Track Foreman Harold Howe and Track Laborer Joe Shepherd performed no work, and received no compensation from the Carrier for the period between 4:30 P.M., December 31, to 7:30 A.M., January 1, 1948.

The agreement dated November 1, 1938 between the parties to this dispute and its subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Classification of Work Rule 2 of the effective agreement is as follows:

Track Department:

> (a) "Group 1 includes employes engaged in the construction and maintenance of tracks and switches, ditching, drainage, cleaning of property and oil switch lamp maintenance.

scrap, drift, cinders, dirt, and other material from right of way and from road and terminal tracks (including tracks at stations, engine yards, and car yards); and cleaning streets used as roadways."

Under Account 272, "Removing Snow, Ice, and Sand," appears the following:

"This account shall include the cost of keeping track and roadway clear of snow, ice, and sand.

"It shall include cost of preventing accumulation, such as the cost of distributing, setting up, inspecting, taking down, and regathering portable snow and sand fences; and cost of tools furnished for the purpose; also cost of storing fences.

"It shall include cost of removing accumulations of snow, ice, and sand, cost of snow-plow and flanger service, and of work-train service; cost of applying and removing flangers from locomotives and cars, and of slatting pilots; cost of salt to keep switches clear; and cost of meals and lodging for men employed in removal service."

It will be noted from the text of the two Accounts that "cleaning of property" is separate and distinct from removing of snow. There is no connection between the two operations as the Interstate Commerce Commission has recognized. Consequently, since the Employees have based their claim on the phrase "cleaning of property," their claim must be denied.

OPINION OF BOARD: The record discloses that on December 31, 1947, Section Foreman Harold Howe was working four regular section men and five extra men in cleaning snow from tracks and switches. At the regular quitting time (4:30 P.M.) Howe was instructed to leave two regular section men on the job to assist two signalmen in cleaning ice and snow from switches. It is the contention of claimants that they should have been used in the place of the two signalmen who were used.

The Organization contends that Rule 2 (a), current Agreement, is controlling. It provides:

"Group 1 includes employes engaged in the construction and maintenance of tracks and switches, ditching, drainage, cleaning of property and oil switch lamp maintenance."

We think that work in connection with keeping tracks and switches clear of snow ordinarily belongs to section men. In emergencies, of course, section men may be augmented by other available employes. But the quoted section of the agreement is ambiguous in that it generally assigns the construction and maintenance of tracks and switches, ditching, drainage, cleaning of property, and oil switch lamp maintenance to section men without referring to snow handling.

Signalmen are charged with the duty of maintaining the signal system and power controlled switches and interlockings. We think a signalman engaged in signal maintenance may properly remove snow and ice to insure the proper operation of signals, electrically controlled switches and interlockings. Such work is incidental to the duties imposed on this craft. In the present case the two signalmen working overtime were cleaning switches within the area controlled by Tower No. 2. The record discloses that a bad storms was imminent and the Carrier decided that signalmen were required on duty to protect the service. The record does not disclose that the work performed was not incidental to this service. If the maintenance of signals or interlockings were not involved, the contentions of the Organization would appear unassailable. Here, the work performed by the signalmen involved keeping the interlocking operating, the removal of snow and ice was incidental to that function and proper to be performed by signalmen. Unless the removal of snow and ice is in connection with work of the Signalmen's craft, and in furtherance thereof, it belongs to section men.

The practice of this Carrier in the past sustains the interpretation we have placed upon it. The record shows that similar work has been performed by signalmen in substantial quantities for the last ten years or more. The conduct of parties to an agreement, with reference to an ambiguous provision thereof, is very expressive as to the meaning intended. Where the parties have pursued a mutual course with reference to it, it affords a safe guide to the interpretation to be given it. We are of the opinion, therefore, that signalmen may be used in cleaning switches, interlockings and signals of snow and ice where such work is incidental to the maintenance of signal equipment and installations. Under the cited rule and the mutual interpretation placed upon it in the past, the Organization has not established its exclusive right to the work in question.

FINDINGS: The Third Division of the Adjustment Board, after giving 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 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of October, 1949.