Award No. 4828

Docket No. SG-4795

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas that:

(a) The Carrier violated and continues to violate the current Signalmen's Agreement when it failed and/or declined to apply the Scope, Classification, Hours of Service, and Call rules or other provisions of the current Signalmen's working agreement, bearing effective date of April 1, 1943, by not assigning generally recognized signal work to employes covered by the working agreement. Specifically, the signal work involved in this claim is the routine and regular testing and inspection of signal apparatus, appliances, and appurtenances which constitute component parts and are integrant to the signal system on this Carrier's property;

(b-1) Signal Maintainer L. B. Shiner, with headquarters at West, Texas, shall be compensated at his regular rate of pay on the basis of time and one-half for an amount of time equal to that required by persons not covered by the current Signalmen's Agreement to perform signal work assigned to such persons in violation of such agreement; namely:

4 hours, April 27, 1948
8 hours, April 28, 1948
8 hours, April 29, 1948
8 hours, April 30, 1948
4 hours, July 19, 1948
4 hours, July 20, 1948
8 hours, July 21, 1948
8 hours, July 22, 1948
4 hours, July 23, 1948
8 hours, July 24, 1948
4 hours, July 26, 1948
8 hours, July 27, 1948
8 hours, July 28, 1948
8 hours, July 29, 1948
4 hours, July 30, 1948
4 hours, August 9, 1948
8 hours, August 10, 1948
8 hours, August 25, 1948
8 hours, August 26, 1948

8 hours, August 27, 1948
4 hours, September 20, 1948
4 hours, September 21, 1948
4 hours, September 22, 1948
8 hours, September 23, 1948

152 hours—Total;

(b-2) Signal Maintainer J. B. McBride, with headquarters at Oswego, Kansas, shall be compensated at his regular rate of pay on basis of time and one-half for amount of time equal to that required by persons not covered by the current Signalmen's Agreement to perform signal work assigned to such persons in violation of such agreement; namely:

8 hours, August 4, 1948
9½ hours, August 5, 1948
5 hours, August 6, 1948
1 hour, August 10, 1948
4 hours, August 11, 1948
3½ hours, August 12, 1948

31 hours—Total;

(b-3) Signal Maintainer J. M. Nading, with headquarters at Vinita, Okla., shall be compensated at his regular rate of pay on the basis of time and one-half for an amount of time equal to that required by persons not covered by the current Signalmen's Agreement to perform signal work assigned to such persons in violation of such agreement; namely:

4 hours, August 11, 1948
5½ hours, August 12, 1948
6 hours, August 13, 1948
6 hours, August 14, 1948
8 hours, August 17, 1948
7 hours, August 18, 1948
7 hours, August 19, 1948
7 hours, August 20, 1948

50½ hours—Total;

(b-4) Signal Maintainer Findley Wilson, with headquarters at Pryor, Okla., shall be compensated at his regular rate of pay on the basis of time and one-half for an amount of time equal to that required by persons not covered by the current Signalmen's Agreement to perform signal work assigned to such persons in violation of such agreement; namely:

8 hours, August 18, 1948
8 hours, August 19, 1948
8 hours, August 20, 1948
8 hours, August 24, 1948
8 hours, August 25, 1948

40 hours—Total;

(b-5) Signal Maintainer A. W. Lofton, with headquarters at Wagoner, Okla., shall be compensated at his regular rate of pay on the basis of time and one-half for an amount of time equal to that required by persons not covered by the current Signalmen's Agreement to perform signal work assigned to such persons in violation of such agreement; namely:

4 hours, August 25, 1948
8 hours, August 26, 1948
4 hours, August 27, 1948

16 hours—Total;

negotiated, when revision of Signalmen's Agreement was requested October 1, 1947 and when original claim was made by him in April 1948, immediately after mediation proceedings were terminated by the National Mediation Board, April 12, 1948, in Case A-2714. If this work was, in fact, covered by and subject to the Scope and other rules of the current Signalmen's Agreement on this property, as Petitioner is now contending, the General Chairman of the Signalmen's Organization surely would have made such claim when such alleged agreement violation first occurred and not five years later. Obviously this claim is designed for no other purpose than to obtain an ill-construed and improper interpretation of the current Signalmen's Agreement on this property, contrary to the interpretation placed on that agreement by the parties, and thrust upon the Carrier a change in that agreement which the Organization requested and the Carrier was compelled to decline, both in direct negotiations and in mediation proceedings. Therefore, any award, other than a denial of this claim, would not only be contrary to the provisions of the current Signalmen's Agreement on this property, as they have been understood and interpreted by the parties in the past, but would also be contrary to the Certification of the National Mediation Board in Case No. R-1825, dated July 24, 1947, and the Railway Labor Act.

The claims in this case are for the amount of time Signal Maintainers actually assisted Signal Supervisors in making tests of signal apparatus during their regular assigned tour of duty at rate of time and one-half in addition to straight time paid for time actually worked, which, if allowed, would constitute payment on basis of two and one-half times the straight time rate. The agreement contains no such penalty for work actually performed, or time and one-half for work not performed.

The Carrier respectfully requests that the Board deny the claim.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subsequent pleadings.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier assigned the performance of certain periodic work of testing and inspecting the component parts of its signal system to Signal Supervisors. Claimants contend that this work is within the Scope of the Signalmen's Agreement and that the Agreement was violated when it was assigned to Signal Supervisors, positions not within the Signalmen's Agreement.

The dispute grows out of the passage by Congress of the Signal Inspection Act approved August 26, 1937. Pursuant to this Act, the Interstate Commerce Commission promulgated rules, standards and instructions as to the manner of installing, maintaining and inspecting the equipment to which the Act referred. Certain requirements as to the testing and inspecting of designated devices and appliances are set forth together with a method of reporting the results. The Carrier assigned this work to Signal Supervisors who, as their title implies, were supervisory employes outside of the Scope of the Signalmen's Agreement. The question for decision is whether the work is reserved to signalmen under their Agreement.

The Scope Rule of the controlling Agreement provides:

> "This agreement governs the rates of pay, hours of service and working conditions of all employes in the Signal Department (except supervisory forces above rank of foreman, clerical forces and engineering forces) performing the work generally recognized as signal work, which work shall include the construction, installation, maintenance and repair of signals, interlocking plants, highway crossing protection devices and their appurtenances, wayside train stop and train control equipment, car retarder systems, centralized traffic

control systems, signal shop work, and all other work generally recognized as signal work."

The foregoing Scope Rule clearly includes testing and inspecting of apparatus. Such work is necessary, not only to determine the cause of trouble after it has occurred, but also as a safeguard against functional failure. The fact that the work is required by an Act of Congress, or rules promulgated pursuant thereto, has no relation to the present claim. The work connected therewith was required to be performed by the Carrier and, if as contended, it is reserved to signalmen under their Agreement, the Carrier is in error in assigning it elsewhere. Award 1498.

It will be conceded at the outset that all inspecting of signal apparatus in the field is not reserved by the Agreement. All supervisory officers are charged with varying amounts of inspection work which is inherent in their positions. But it does not include the inspecting and testing necessary to the proper installation, maintenance and repair of the signal system. The Carrier appears to argue that the inspections and tests required by the Signal Inspection Act are something foreign to the installation, maintenance and repair of the signal system. Any such assumption is erroneous.

It is the duty of management to operate its railroad safely and efficiently. It will ordinarily in the performance of this duty, require inspections and tests to accomplish this purpose. Where, however, for any reasons the lawmaking powers of the country deem it necessary to the public welfare to lay down stricter rules than the Carrier has done, the Carrier is obliged to carry them out in the same manner as the ones they themselves prescribed. The additional work to be performed is as much the work of a particular craft in the one case as in the other. The very purpose of the law is to require more stringent regulations for the installation, maintenance and repair of safety appliances in the promotion of the public welfare. The work here in question is clearly within the Scope Rule of the Signalmen's Agreement and consequently is work reserved to employes within that Agreement.

The Carrier contends that as the American Railway Supervisors, Inc., has the right to represent the Signal Supervisors, a jurisdictional dispute exists and that this Board has no authority to decide the issue here involved. We here determine only the rights of the Carrier and the Signalmen under the Agreement which they have made. We do not determine the rights of Signal Supervisors under their Agreement with the Carrier. This does not raise a jurisdictional dispute. It is only where work is claimed by more than one Organization and no Organization has a contract right to it that a jurisdictional dispute arises. The signalmen having a contract to perform the work of testing and inspecting herein described, the Board has jurisdiction to determine the rights of the parties. Awards 3999, 4471, 4580.

The Carrier argues that testing and inspecting was work performed by signal supervisors prior to the date of the Signalmen's current Agreement. A practice does not supersede the plain language of an Agreement. It may operate as a bar to reparations but not to change the meaning of plain words. Acquiescence in a violation leads to the same result. Award 4428.

The claim will be allowed at the pro rata rate under the reasoning of Award 4244.

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

That both parties to this dispute waived oral hearing thereon;

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 at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 31st day of March, 1950.