

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE PENNSYLVANIA RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Pennsylvania Railroad that:

(a) Carrier violated the Scope of the current agreement when it assigned responsibility of weighing, determining the charged condition, and shipping CO-2 fire extinguishers to employees of the Telegraph & Signal Department.

(b) All employees covered by the above agreement be relieved of all responsibilities and duties in connection with the care of CO-2 fire extinguishers.

(c) All T&S and T&T Maintainers, upon whose territory CO-2 fire extinguishers exist, be paid one hour each day, at time and one-half rate in addition to their regular tour of duty until relieved of all responsibility and duty in connection with the care of CO-2 fire extinguishers.

EMPLOYEES' STATEMENT OF FACTS: On the Cincinnati Division, CO-2 gas generating fire extinguishers are located at various towers, signal headquarters, and other buildings for use in case of fire. These extinguishers require weighing semi-annually to determine whether or not they are properly charged. If the weight is down 10% below initial charged weight, they require recharging and must be sent to the Master Carpenter at Cincinnati for that purpose.

These extinguishers were installed in 1946, but the Telegraph and Signal Department employees were not responsible for the inspection or handling of this apparatus until instructions were issued to Inspectors T. & S. by Supervisor T. & S., L. W. Hayhurst, under date of February 2, 1950, that the responsibility of weighing and handling of CO-2 fire extinguishers had been assigned to the T. & S. Department employers. We quote below copy of aforementioned instructions:

"Cincinnati, Ohio
February 2, 1950

F. L. Bath
W. L. Burch
Inspectors, T&S

The responsibility of weighing CO-2 Fire Extinguishers has been given to the T & S Dept.

CONCLUSION

The Carrier has shown that the assigning of the work of weighing CO₂ fire extinguishers to T. & S. Department employees of the Cincinnati Division did not violate the Scope Rule of the applicable Agreement and that the unnamed Claimants are not entitled to the compensation which they claim; further, that the claims in this case were not handled by the Employees in accordance with the spirit and intent of the Railway Labor Act, as amended, by reason of the unreasonable delay in progressing such claims to your Honorable Board.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimant, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same. Oral hearing is desired.

All data contained herein have been presented to the employees involved or to their duly authorized representative.

(Exhibits not reproduced)

OPINION OF BOARD: The material facts in this case are not in dispute. Carrier installed a number of CO-2 fire extinguishers on the Cincinnati Division at various towers, signal headquarters and other buildings. The responsibility for weighing these extinguishers semi-annually and after they have been used was assigned to employees of the T&S Department, covered by the scope rule of the Agreement herein. If, upon being weighed, the extinguisher is found to be down 10% of initial charged weight, it must be sent to the Master Carpenter at Cincinnati to be recharged and returned. There is some disagreement as to whether T&S employees are responsible for one extinguisher at a maintenance-of-way garage, but it is clear that the rest of the extinguishers are located at places where T&S employees normally work.

The claim is that this type of work is not covered by the scope rule of the Agreement and that therefore the Carrier has no right to impose it upon these employees. Further, that the employees be relieved of all responsibility for this work and be paid extra compensation every day until so relieved.

No contention is made by either party that this work is covered by the scope rule here or that it belongs to any other class or craft of employee. It is implicit though not stated in the record that there are many such fire extinguishers located at points all over the railroad property. The only evidence as to the maintenance of these other extinguishers is the uncontradicted statement by Carrier at page eighteen of the record that:

"In actual practice, the weighing of this precautionary equipment usually and logically is assigned without violating any Agreement to the employee most available to perform it."

Considerable space is devoted in the record to the question of whether this work is "incident to" or "related to" the usual work of these signal employees. We conclude that other than in the sense that its basic purpose is to protect the equipment upon which they work, it has no relationship to their normal work.

We are faced then with a decision as to the basic purpose and meaning of the scope rule. From the awards of this Division which have been cited to us, it is apparent that there are divergent views on the subject. In Award 5948, which is similar to this case except that there even a relationship such as the protection of equipment was lacking, the same view of the function of the scope rule as is urged by claimants here was upheld. That is, any work

not covered in the scope rule, either specifically or by common understanding of the duties of the class or craft involved, cannot be assigned to the employees covered by the rule.

In Award 4572, followed in Award 5018 and more recently in Award 7093, another view is stated:

"The violation charged against the Carrier is the assignment of work not covered by the scope rule of the agreement to an employee covered by the agreement. The scope rule simply specifies the employees covered by the agreement and establishes the various types of work to which the covered employees are entitled and which the Carrier is required to assign to them. It does not, nor does any other rule of the agreement, prohibit the Carrier from assigning other duties to such employees."

The work of the railroads is divided among many well defined groups of employees. Each jealously guards that work which historically and traditionally and by the development of special skills has become recognized as its exclusive property. Under the scope rules of the various agreements, the rights to these various types of work are set out and the Carriers who are parties to the agreements are bound to respect these rights. However, there are areas of work wherein no class or craft has claimed exclusive jurisdiction—such as the work which is the subject of this dispute. We cannot hold in such case that Carrier is precluded from assigning this work when necessary because it is not covered by the scope rule in any of its agreements. Rather, we follow the view in the latter three awards cited above. If the new duties and responsibilities are in fact of sufficient proportion so that the employees feel that they are entitled to additional compensation, their recourse is to negotiation with the Carrier under Section 6 of the Railway Labor Act. See Award 7093.

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 Employees involved in this dispute are respectively carrier and employees 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: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 17th day of November, 1955.