

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Seaboard Air Line Railroad Company for:

Pay at the overtime rate for respective classes of employees listed in this claim, Signal Foreman H. G. Thompson, Leading Signalman J. F. Power, Jr., and Signalman H. B. Miles, for eight (8) hours each on Friday, November 28, and three (3) hours each on Saturday, November 29, 1952, when two (2) Signal Construction Supervisors, A. V. Wilson and J. M. Austin, performed signal work that is covered by and included in the current Signalmen's Agreement, in violation of the Agreement and the Letter of Understanding referred to in Rule 5 of that Agreement.

EMPLOYES' STATEMENT OF FACTS: Signal Gang No. 5, under the direction of Signal Foreman H. G. Thompson, was engaged in performing the work of installing signals and switches for double track at Aberdeen, N. C. The gang worked on Thursday, November 27, 1952 (Thanksgiving Day) and was off duty on Friday, November 28, 1952, in lieu of the holiday, and was off duty on Saturday, November 29, 1952, as it was an assigned rest day.

During the absence of the gang on November 28 and 29 Signal Construction Supervisors A. V. Wilson and J. M. Austin performed signal work in connection with the completion of the signal installation at Aberdeen, N. C.

The signal work performed by Messrs. A. V. Wilson and J. M. Austin consisted of completing the inspections and tests that were being done by the men on Gang No. 5 before they left work for the week-end, such as hooking up batteries, changing wires on the relays and other signal apparatus, and making break-down tests in preparation to putting the new installation in service.

The work performed by these supervisory officers actually entailed the completion of the new installation in order that it could be hooked up and fitted into the present signal system that was in operation. It was also necessary that they install a Line Coding Storage Unit, which they procured from line stock at Aberdeen, N. C., as well as locate and correct three or four errors found in the signal relay case.

tempt to now get a ruling from the Board to so provide is not persuasive. As held in Third Division Award 6107: "In Award 2491 this Board said . . . 'We can only interpret the contract as it is and treat that as reserved to the carrier which is not granted to the employees by the agreement.' See Awards 4304, 2622, 5307. Any change to be made in a contract to meet a condition as here presented is a matter for negotiation between the parties. We can neither legislate nor can we write into the agreement that which is not there." Also, Third Division Award 5864: "We are required to take the agreement as it is written and cannot rewrite it by interpretation nor by interpretation put in that which the parties have left out."

It is clearly shown that "testing and inspecting" is not included in the current agreement as being signal work to be performed by signal employees and has never been recognized as being signal work. It is clearly evident that the Organization recognized "testing and inspecting" was not work belonging to signal employees when it attempted to have the same included in the scope of the 1951 agreement and then agreed to its exclusion therefrom.

There is no merit to the claim and it should be denied.

Carrier affirmatively states that all data contained herein has been made known to or discussed with Organization representatives.

OPINION OF BOARD: From Monday, November 24, 1952, through Thursday, November 25, 1952, Signal Gang No. 5 worked on a new signal installation at Aberdeen, N. C. Thursday was a holiday but the gang worked that day instead of Friday, the work week thus being completed on Thursday, Saturday and Sunday were rest days. The Gang Foreman, who is a member of the bargaining unit, had been instructed to have all the connections completed before releasing his group for the weekend. On Friday and Saturday two Construction Supervisors, who are not covered by the subject Agreement, appeared at the location to perform a breakdown test and inspection of the installation. They found that the installation was not entirely completed, however. They therefore performed a small amount of work which concededly is covered by the Signalmen's Agreement before proceeding to carry out the test and inspection activity. The Construction Supervisors also made certain corrections in the installation following the test and inspection. The Carrier agrees that the correction work also accrues to employees covered by the agreement. The question at issue is therefore whether the testing and inspection work itself is covered by the Agreement.

The Scope Rule does not expressly refer to testing and inspecting. Petitioner contends, however, that such activity is work in connection with completing the job of installation of signal equipment and thus that it comes within the purview of the rule. Reference also is made to the words "as well as all other work generally recognized as signal work" as set forth in the rule. It is contended that testing and inspecting of signal equipment has been recognized by Board awards as Signalmen's work under agreements that do not specifically refer to such work.

The Carrier states, without serious contradiction, that since 1941 Supervisors have performed the same kind of inspection and testing as here involved. It also notes the established fact that during the negotiations of the subject Agreement in 1951 the Organization submitted but then withdrew a request that testing and inspection be listed in the Scope Rule.

We think the consistent past practice on this question and the parties' discussion of the matter during their negotiation of the subject Agreement reflect their mutual intent that the inspection and testing of the nature here at issue is not included within the Scope Rule. To sustain the Petitioner's contention on this phase of the case would amount to granting the employees that which they failed to obtain through negotiation. It may well be that the work in question is regarded as coming within the Scope Rule of Signalmen's agreements with certain other carriers. Such fact cannot be held to outweigh the

clear intent evidenced by the negotiation history and practice on the subject property, however.

The claim should be sustained at pro rata rate with respect to the work performed by the Construction Supervisors in completing and subsequently making corrections in the signal installation at Aberdeen. The claim should be denied with respect to that portion of the Supervisors' work which involved testing and inspecting.

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 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 herein; and

That the Carrier violated the Agreement in part as stated in the Opinion.

AWARD

Claim sustained in part and denied in part as stated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By ORDER of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March, 1958.