Award No. 9630

Docket No. SG-8479

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Southern Pacific Company:

(a) That the Southern Pacific Company violated the Signalmen's Agreement dated April 1, 1947 (revised August 1, 1949) when it failed and/or declined to apply the Scope, Classification, Hours of Service, Call, Bulletin, Assignment, Promotion and Seniority rules, or other provisions of the agreement, by not assigning generally recognized signal work to employes covered by the agreement since April 8, 1954.

Specifically, the signal work involved is installation, repair, and maintenance of stand-by power plants for C.T.C. power in case of emergency between Crescent Lake and Eugene, Oregon, which constitutes component parts and are integrant to the signal system.

(b) That the following men in Signal Gangs Nos.:

Shasta Gang No. 7	Shasta Gang No. 3	Portland Gang No. 1
A. L. Kavanaugh	W. Barber	S. W. Sargeant
J. F. Boucek	G. C. Wilm	J. C. Anderson
E. E. Herd	D. C. Miller	J. C. Gary
E. J. Henning	F. A. Davis	J. H. Marthaller
J. E. Barham	C. W. Wallace	A. J. Trojan
R. W. Zenker	J. A. Davis	R. B. Redden
J. M. Holbert	H. J. Koester	R. D. Hanson
R. E. Brummett	J. G. Tryon	B. O. Westfall
D. S. Fraser	G. J. Cote	L. Tolbert
L. M. Flock	D. G. Davis	D. Lee
	O. D. Ringering	

Portland Gang No. 2	Portland Gang No. 3	Portland Megger Gang
L. R. Lambert	C. W. Yeager	J. H. Murphree
C. B. Rugg	J. E. Williams	H. E. Shrauger
S. K. Hamilton	C. E. Diller	J. A. Young
G. E. Shank	F. S. Odgers	
A. L. Hugill	G. S. Phipps	
R. L. Wilkinson	C. J. Creamer	
J. A. Nichols	J. Fenning, Jr.	
A. E. Lafferty	L. E. Andringa	
R. B. Aslin	G. G. Boucher	
H. L. Dodds	W. J. Lish	

and any other employes who may work on the construction be allowed an adjustment in pay for an amount of time at the straight-time rate equal to that required by employes not covered by the Signalmen's Agreement to perform work of installation, repair, and maintenance of all stand-by power plants for C. T. C. between Crescent Lake and Eugene, Oregon.

EMPLOYES' STATEMENT OF FACTS: On or about April 8, 1954, this Carrier commenced installation of a centralized traffic control system between Crescent Lake and Eugene, Oregon. The signal work involved in the construction and installation of the sheet metal housings used to house the stand-by power plants, and the stand-by power plants used in this signal system, was assigned to employes of this Carrier who held no seniority or rights and who were not covered by this Carrier's Signal Employes' working agreement. The sheet metal housings and the power plants were installed and wired for integration into the C.T.C. system being installed by the Carrier, and their sole purpose was to furnish power for this signal system in emergency cases when the regular source of power was not available.

The signal work involved in this unsettled claim consists of the installation of sheet metal housings at McCredie Springs, Pryor, Wicopee, Fields, and Cruzette, Oregon, and the installation, wiring, and fitting-up of Onan power plants, Model 305CK-3R363AA, A.C. volts 115 or 230 KVC 3.5 watts, amps. 15.2 at 230 volts, at the above-mentioned locations.

The installation of these housings and the installation and wiring of these power plants as performed by the employes who held no seniority or rights under the Signalmen's Agreement is a portion of the Scope work covered by the agreement and is an integral part of the C.T.C. system at this location to insure proper operation in case of a power failure by the regular power source. Without this emergency power source, the signal system would not operate during a power failure.

The housings and stand-by power plants used by this Carrier are not used for any purpose other than for stand-by in emergency cases and to insure that the C.T.C. system will operate properly in case of emergency when the normal power source has failed.

In the past, with one exception, the installation, maintenance, and testing of all stand-by power plants, including their appurtenances and appliances,

Act, the instant claim involves request for change in agreement, which is beyond the purview of this Board.

It is a well-established principle that it is not the function of this Board to modify an existing rule or supply a new rule where none exists. To accept petitioner's position in this docket would be tantamount to writing into the agreement a provision which does not appear therein and was never intended by the parties.

CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and requests that said claim, if not dismissed, be denied.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

The carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The Employes state that the Carrier has violated its agreement, from April 8, 1954, when it had employes not covered by the Signalmen's Agreement build and install power for stand-by power plants at six locations between Crescent Lake and Eugene, Oregon. The work in question was performed by Carrier's B. & B. employes, its electricians, water service employes, and motor car mechanics. The Employes state that in the past, with one exception, the installation, maintenance and testing of all stand-by power plants, including their appurtances and appliances, have been performed by signalmen; that this type of signal work is covered by the Scope Rule of the Signalmen's Agreement, as well as being generally recognized for years as signal work to be performed by the signal employes. The Employes further state that the Scope Rule of their Agreement gives to them the exclusive right to the construction, reconstruction, installation, mainenance, testing, inspecting and repair of * * * centralized traffic control systems. The stand-by power plants are an integral part of the centralized control system.

The Carrier states that the installation of stand-by power plants on the Portland Division was accomplished in substantially the same manner as that in which similar plants have been installed previously at other locations on Carrier's property. The Employes did not, however, contend that any of such work belonged to the signalmen until these stand-by power plants were installed on the Portland Division in 1954. The Carrier states that the stand-by power plants, which are a substitute for the commercial power service if that service fails, are not part of the centralized traffic control system.

The Scope Rule of the Employes' Agreement states that they will perform the construction, reconstruction, installation, maintenance, testing, inspection and repair of centralized traffic control systems. However, the construction

and installation of stand-by power plants are not an integral part of the centralized traffic control systems and do not become an integral part of those systems until the power is connected up with the centralized traffic control system. The power from the stand-by power plants is used only if the commercial power fails.

The Employes have the burden of proof in presenting their claim. When they state that in the past, with one exception, the installation, maintenance and testing of all stand-by power plants have been performed by signalmen employes and this statement is denied by the Carrier, who states that these stand-by power plants have always been installed as they were on the Portland Division, the Employes have failed in their burden of proof by not showing when and where they have performed the work in question.

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 Carrier did not violate the effective Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of November, 1960.

DISSENT TO AWARD 9630, DOCKET SG-8479

The majority, consisting of the Referee and the Carrier Members of the Division, fully understood that the stand-by power plants involved were installed solely to supply power for the centralized traffic control system in the event of commercial power failure. Nevertheless, the majority proceeded to find that these stand-by power units "* * * are not an integral part of the centralized traffic control systems and do not become an integral part of those systems until the power is connected up with the centralized traffic control system. * * *", which is not only absurd but also contrary to the many awards that have held that the classification of work is determined by the reason for doing it and its primary purpose.

The majority was fully aware that the parties' agreement unequivocally covers the construction, reconstruction, installation, maintenance, testing, inspecting and repair of centralized traffic control systems; therefore, the majority committed further error in leaning upon an alleged past practice as grounds for denying the claim. It is well established that practice contrary to a rule, even if acquiesced in by the other party, does not change the rule.

Award 9630 does not interpret the agreement in light of the facts. Therefore, I dissent.

/s/ G. Orndorff
Labor Member