

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) The Carrier violated the effective Agreement when, on or about May 1, 1952, it assigned employes of the Signal Department the work of constructing foundations for the installation of flasher light signals at Pike Street crossing, Carbondale, Pennsylvania;

(2) Affected employes, covered by the scope of the Maintenance of Way Agreement, be paid at their respective straight time rates, an equal number of man-hours as were consumed by the employes of the Signal Department in performing the work referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On or about May 1, 1952, the Carrier assigned employes of the Signal Department, who hold no seniority rights under the effective Maintenance of Agreement, to the work of constructing foundations for flasher light signals at Pike Street crossing, Carbondale, Pennsylvania. This work consisted of excavating for two (2) concrete foundations, assembling wooden forms and the pouring of the concrete for flasher light signal posts foundations.

The Employes claim that the Carrier violated the Agreement when it assigned this work to the Signal Department employes. The Carrier has denied the claim.

The Agreement in effect between the two parties to this dispute dated November 15, 1943, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

EMPLOYEES' POSITION: Work in connection with construction, maintenance, repairing and dismantling of the Carrier's buildings and structures is Maintenance of Way work. As pointed out in the Employes' Statement of Facts however, on or about May 1, 1952, the Carrier assigned the work of excavating, assembling wooden forms and pouring concrete for flasher light

FOR THE DELAWARE AND HUDSON RAILROAD CORPORATION:

/s/ P. O. Ferris
P. O. Ferris
Assistant General Manager and
Chief Engineer.

/s/ F. L. Hanlon
F. L. Hanlon
Manager of Personnel.

Approved: /s/ G. D. Hughey
G. D. Hughey
Vice-President and
General Manager."

In the aforequoted Memorandum of Agreement, it will be noted that the Carrier has agreed and recognized that work of this character properly comes within the scope of the Agreement in effect as of November 15, 1943. It was under this very same effective Agreement that the work involved in this dispute was performed by employees of the Signal Department. We submit therefore, since the scope of the effective Agreement covered the class of work referred to in Dockets No. MW-4784 and 4785, and since such Agreement is yet in effect, it quite naturally embraces the work involved in the instant dispute.

Following the consumation of the above quoted Memorandum of Agreement, conference was held between the two (2) parties for the purpose of endeavoring to dispose of the instant claim on the basis of the provisions contained in the Memorandum of Agreement. However, the Carrier refused to recognize such Memorandum of Agreement as the proper basis for settling this dispute.

We respectfully request that our claim be allowed.

It is hereby affirmed that all data herein submitted in support of our position have heretofore been presented to the Carrier and are hereby made a part of the question in dispute.

CARRIER'S STATEMENT OF FACTS: Signalmen working under the scope of an agreement held by the Brotherhood of Railroad Signalmen of America installed flashing light signals at Pike St., Carbondale, Pa. Claim of Maintenance of Way employes for this work was denied by the highest officer designated to handle grievances on the property on October 29, 1952.

POSITION OF CARRIER: This claim is identical to that involved in Local Case No. 6.51 M.W. on which carrier's submission to the Third Division is dated the same as this submission. The carrier asks that the argument and evidence presented in Case 6.51 M.W. be considered as its position in this case.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made a part of the particular question in dispute.

OPINION OF BOARD: During the first week in May, 1952, the Carrier assigned the work of constructing forms and foundations for the installation of flasher light signals at Pike Street, Carbondale, Pennsylvania, to Signal

Department employees. This claim was thereafter filed on behalf of the Maintenance of Way Employees, citing Awards 4845 and 4846 of this Board. The third party question was raised and a hearing held on that issue May 11, 1960.

In Award 4845 this Board held that "the construction of buildings is work included in that which is traditionally and customarily performed by maintenance of way employees". And in Award 4846 Referee Carter held that the "repairing and maintaining of crossing gates is work belonging to employees under the Maintenance of Way Agreement". Neither of these cases involved the installation of flasher light signals, which is the subject of the instant claim. Particularly involved is the construction of "foundations" for the flashing signal lights, since this includes the setting of concrete forms and the pouring of concrete to secure the light poles in a firm foundation.

Some five years after the claims disposed of in Awards 4845 and 4846, a further claim was made by the Maintenance of Way Employees following an assignment of employees from the Signal Department "to excavate, install forms, equipment was being installed. In Award 8091, Referee Lynch found this to build foundations, pour concrete, etc.," at certain locations where new signal be in line with the type of construction involved in the previous Awards (4845 and 4846) involving the same parties and sustained the claim.

This award was followed by a Memorandum Agreement signed by the parties at Albany, New York, on October 9, 1959, in which the following statement was made:

"In consideration of the payments hereinabove set forth, it is agreed by and between the parties hereto that the employees covered by the Maintenance of Way Agreement effective November 15, 1943, as amended, and represented by the Brotherhood of Maintenance of Way Employees on the Delaware and Hudson Railroad do not have any exclusive right to perform the work described, or referred to, in the Opinion of the Board in Award 8091."

Early in December 1950, the Carrier assigned employees of the Signal Department to construct forms and foundations for the installation of flasher light signals at High Mills Crossing on the Saratoga Division. Again the Maintenance of Way Employees filed a claim, insisting that this type of work is properly covered by the Scope Rule of the Agreement with this Organization. The rule is as follows:

"The rules contained herein shall govern the hours of service, working conditions and rates of pay of all employees in any and all sub-departments of the Maintenance of Way and Structures Department, represented by the Brotherhood of Maintenance of Way Employees, except:

1. Employees above the rank of foreman.
2. Clerical and engineering forces.
3. Signal, telegraph and telephone employees."

While that claim was in process, the Carrier took the position that the installation of flasher light signals has been, by tradition, custom and practice on its property, assigned to employees in the Signal Department and has never

been accepted as work reserved exclusively to Maintenance of Way employes. The Board sustained the Carrier's position and denied the Organization's claim in that case. Award 8755.

Referee Sempliner concluded his opinion in Award 8755 with the following statement:

"Thus it appears that the work in question, not being exclusively allocated to the Claimant in the scope section of the contract, and of a type performed by others in the past, is work which in the discretion of the Carrier, may be awarded to either class." (Emphasis ours)

This Award established a recognized distinction between the type of construction involved in the previous cases (Awards 4845 and 4846) and the installation of signal lights at Crossings.

The file in the latest case from the same parties, Docket Number MW-7944, Award 8755, involving the same type of work, has been made a part of the record in the case now before us.

In view of this record and particularly the Memorandum Agreement of the parties dated October 9, 1959, we find no basis for concluding that the *Scope rule of the parties' Agreement* has been violated.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 23rd day of June, 1961.