Award No. 9984
Docket No. MW-8824

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

READING COMPANY

1. The Carrier violated its Agreement with the Brotherhood of Maintenance of Way Employes when it assigned employes outside the scope thereof to install and maintain switch lamps in the Belmont-West Falls Yard area;

2. Trackmen holding seniority rights in the Belmont-West Falls Yard area, each be allowed pay at their respective straight time rate for an equal proportionate share of the total man-hours consumed in the performance of the work referred to in part one (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Maintenance of Way Employes have historically and traditionally performed work necessary in installing, inspecting, maintaining and repairing switch lamps.

During the latter part of 1955, the Carrier assigned Signalmen to replace oil burning switch lamps with battery-operated switch lamps and to maintain said switch lamps in the Belmont-West Falls Yard area, Philadelphia Division.

Claim as set forth herein was filed and the Carrier has declined the claim throughout all stages of handling.

The Agreement in effect between the two parties to this dispute dated January 1, 1944, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Prior to the latter part of 1955, the switch lamps in the Carrier's Belmont-West Falls Yard area were oil burning lamps which had to be ignited, cleaned, filled, repaired and the lenses renewed from time to time. This work, in this area, was exclusively performed by Trackmen.

During the latter part of 1955, the Carrier decided to replace the oil burning switch lamps with battery-operated switch lamps and assigned Signal-

Part two of the Organization's claim is a request that Carrier be required to compensate trackmen holding seniority rights in the Belmont-West Falls Yard area at their respective straight time rate for an equal proportionate share of the time consumed by Signal Department employes in installing and maintaining the electrically lighted switch lamps. This, in Carrier's opinion, would be an unnecessary and unwarranted penalty payment and has no basis or support under Carrier's agreement with the Brotherhood of Maintenance of Way Employes. Furthermore, Carrier submits there has been no reduction in Carrier's maintenance of way forces as a result of this installation and Carrier maintains claimants lost no time or earnings as a result thereof and were not adversely affected thereby.

Under the facts, evidence and circumstances presented hereinbefore, it is the Carrier's position that the provisions of Section 3, First (j), of the Railway Labor Act require that notice be given to the Brotherhood of Railroad Signalmen of America in the instant case, and as they have not been served with what is known in law as "process" and made a party to the pending proceeding, the Carrier requests the Board not to assume jurisdiction of this claim and to dismiss same; however, should the Board assume jurisdiction, Carrier maintains that the claim is unjustified and not supported by the evidence, practice or meaning and intent of the rules of the Maintenance of Way agreement and requests the Board to so find and deny the claim.

This claim has been discussed in conference and handled by correspondence with representatives of the Brotherhood of Maintenance of Way Employes.

OPINION OF BOARD: This dispute stems from Carrier's use of Signalmen rather than Trackmen to install and maintain electric switch lamps in the Belmont-West Falls Yard area at Philadelphia.

Since the Scope Rule of the applicable Agreement contains no express reference to the disputed work, it is appropriate to examine the practice of the parties under that Rule to determine their intent. Prior to the installation of the electric switch lamps in September 1955, the switch lamps used in the Belmont-West Falls Yard were of the oil burning variety. There appears to be no controversy that Trackmen traditionally and consistently performed the work of installing, cleaning, filling, repairing and otherwise maintaining the oil burning switch lamps.

We are satisfied from the evidence in the record that the change to electric switch lamps is not of such a nature as to alter substantially the character of the disputed work. In some areas, as Carrier concedes, on other properties to be sure, trackmen are used to maintain electric switch lamps; while this fact is not controlling, it does indicate that these duties are not of such a complex and technical nature as to require special skills not possessed by trackmen.

The removal of a significant area of responsibility from the work content of a position tends to emasculate the applicable collective bargaining agreement and is therefore always of critical importance. Where as here Petitioner has shown to our satisfaction that the trackmen have traditionally installed and maintained switch lamps and the change in the type of lamp to be maintained has not substantially altered those duties, no valid basis is perceived for depriving the trackmen of that work. It is not surprising that this Board has reached a contrary result in other cases involving different factual situations (See Awards 7299, 4584, 4452, e. g.) since the

question as to the effect and scope of the change is one of fact to be decided under the special circumstances of each case. cf. Awards 4448, 864.

On the basis of the record now before us, it is our conclusion that the work of installing and maintaining electric switch lamps in the Belmont-West Falls Yard at Philadelphia, excepting electric wiring work, belongs to the trackmen. We are excluding electric wiring work since it appears from the record that such work, by skill and tradition, belongs to a class of employes other than maintenance of way men.

For the reasons mentioned in a long line of Awards including 9333, 9248, 9205 and 8526, we do not agree with Carrier's contention that the claim is defective because Claimants are not specifically named. The claim is sufficiently clear and the Claimants readily ascertainable.

As to Carrier's objection that this is a jurisdictional dispute between Petitioner and the Signalmen's Organization which we are neither equipped nor empowered to decide, we find that the other Organization has been duly notified and heard from regarding the claim and we believe that this Board has the necessary jurisdiction of the subject matter and the parties concerned to dispose of the dispute at this time. See Award 8070 and decisions therein cited.

The further point has been raised by Carrier, and disputed by Petitioner, that the monetary claim must in any event be denied since it is "for nothing more than a penalty" and this Board lacks authority to assess penalty payments in the absence of an appropriate contract provision. The positions of both parties on this point are reinforced by lengthy briefs containing numerous citations of awards and other authorities.

In this Referees opinion, "penalty" is one of those words ("jurisdiction" is another) that are loosely and inaccurately used in awards under our informal procedures. In some of the cases that came before this Board, a collective right may be involved that under suitable circumstances may warrant the sustaining of a monetary claim that goes beyond the actual and direct financial loss suffered by the individual employes affected by the violation. However, we do not consider such payments to be reasonable or desirable under the circumstances of the present case, particularly since the violation involved a difficult personnel problem and does not appear to have been of a wilful or flagrant nature. See Awards 9415 and 5186.

In view of the foregoing considerations, we will sustain the first part of the claim in its entirety and the second to the extent that the Claimants shall be made whole for any loss they may have suffered as a result of the violation we have found to exist.

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 violated.

AWARD

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of July, 1961.

DISSENT TO AWARD NO. 9984, DOCKET NO. MW-8824

Award 9984 is in error in sustaining a part of the claim by concluding, among other things, "that the change to electric switch lamps is not of such a nature as to alter substantially the character of the disputed work", and, therefore, we dissent. However, Award 9984 is correct in excepting work which "by skill and tradition, belongs to a class of employes other than maintenance of way men" and in denying any "monetary claim that goes beyond the actual and direct financial loss suffered by the individual employes affected by the violation". It was undisputed here that Claimants suffered no financial loss.

/s/ W. H. Castle

/s/ P. C. Carter

/s/ R. A. Carroll

/s/ D. S. Dugan

/s/ J. F. Mullen