

Award No. 10522

Docket No. MW-8744

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

James P. Carey, Jr., Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
MISSOURI PACIFIC RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when, on or about July 7, 1955, it assigned and/or permitted employees holding no seniority rights under the effective Agreement to perform work in connection with the installation of track switches at Ensign, Arkansas, which belongs to and comes under the jurisdiction of the Carrier's Track Welding forces.

(2) Welder D. H. Morgan and Welder Helper J. R. Burson each be allowed five (5) hours' pay at their respective straight time rates account of the violation referred to in part one (1) of this claim.

EMPLOYES' POSITION: The Scope Rule reads as follows:

"SCOPE: These rules govern the hours of service and working conditions of **all employees herein named** in the Maintenance of Way Department and sub-departments thereof (not including supervisory forces above the rank of foreman) as follows:

(a) Bridge and Building Department:

Foreman
Assistant Foremen
Motor Car Operators in B&B Gangs
Water Service Foremen, Assistant Foremen,
Repairmen, Helpers, Laborers and Pumpers
Motor Car Repairmen and Helpers
Mechanics (carpenters and painters), helpers
and laborers.

(b) Roadway Track Department:

Section and Extra Gang Foremen
Assistant Section and Extra Gang Foremen

It is also shown in the record that the work done was directly incidental to the regular work of the signalman. It is apparent that, in so far as the track was concerned, it need not have been done because it was for the purpose of securing the proper fitting of parts to insure proper operation of the signals. Therefore it is the opinion of the Carrier that even if there was no record of practice to support its position, the work would still be properly assignable to the signalman craft.

There is no Agreement requirement or authority for the payment of these claims.

(Exhibits not reproduced.)

OPINION OF BOARD: The scope rule referred to by the Employees merely classifies Employees governed by the Maintenance of Way Agreement and does not define or delineate the duties which are exclusively or non-exclusively delegated to each class. The Board has generally held that in such circumstances past practice is a material factor in determining whether the work in question is within the exclusive domain of a class.

The Organization maintains that track forces have traditionally performed the installation of switches, including angle bars and hook and tie plates. The Carrier asserts that practice has recognized and permitted Signalmen to use cutting torches in performance of their work including the installation and adjustment of remote control switches.

The record reveals that on July 7, 1955 at Ensign, Arkansas, a switch in C.T.C. territory was installed jointly by section men, extra gang men and signalmen, and that the installation involved a substantial amount of signal work. In installing a remote control switch, it was necessary to have a joint just ahead of the heel block. It was found that the switch point would not fit up due to the joint and it became necessary to cut off a portion of the angle bar so that the point would line up closer to the stock rail. The hook plates were heated to fit the rail. The work involved use of cutting torch in straightening the plates and shortening angle bars.

We think the evidence justifies the finding that in the circumstances shown the work complained of was so reasonably and directly related to the work of signalmen as to constitute an integral part of their duties in installing remote control switches.

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: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 17th day of April 1962.