

Award No. 10867

Docket No. SG-10283

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Harold Kramer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System General Committee of the Brotherhood of Railroad Signalmen of America on the Chicago Great Western Railway Company:

(a) That the maintenance of the telephone and telegraph lines between St. Paul, Minnesota, and Oelwein, Iowa, including to Mankato, Red Wing, Rochester, Winona, and Osage, Oelwein, Iowa, to Chicago, Illinois, and Waterloo, Iowa, to Kansas City, Missouri, be returned to the employees we represent.

(b) That the Signal Maintainers' positions at Dyersville, Iowa; Mingo, Iowa; St. Joseph, Missouri; New Hampton, Iowa; and Rochester, Minnesota, be restored. (Carrier's File S-4)

EMPLOYEES' STATEMENT OF FACTS: On or about September 1, 1956, the Carrier assigned the maintenance of the telephone and telegraph lines and equipment on the Chicago Great Western Railway Company to other than Signal Department employees. Prior to September 1, 1956, the employees represented by the Brotherhood of Railroad Signalmen of America maintained the telephone and telegraph lines and equipment between St. Paul, Minn., and Oelwein, Iowa (including to Mankato, Red Wing, Rochester, Winona, and Osage), Oelwein to Chicago and Waterloo to Kansas City. The maintenance of the telephone and telegraph lines and equipment has been assigned to and performed for over thirty-five years by employees of the Signal Department, who are represented by the Brotherhood of Railroad Signalmen. It has been an established practice on this property. As a result of the maintenance of the telephone and telegraph lines and equipment being removed from the duties of the Signal Department, five (5) Signal Maintainer positions were abolished. The five positions were abolished on Bulletin No. 1826, dated August 23, 1956, which is attached hereto and is identified as Brotherhood's Exhibit No. 1.

Subsequent to the abolishment of the Signal Maintainer positions, the Carrier established eight linemen positions on the property to perform the work of maintaining the telephone and telegraph lines and equipment, formerly

not to write new rules — see Awards 4763, 6096, 6107, 6205, 6339, 6365, 6611, 6695, 6707, 6828, 6912, 7093 and others.

Neither the Scope Rule nor any other rule in the Signalmen's Agreement provides or even contemplates that **communication line work** belongs to Signalmen. On the other hand, there can be no question that such work is specifically included in the Linemen's Agreement. No change has been made in the manner in which **signal work** is performed; no work has been removed from the Signalmen's scope rule and there is no dispute between the parties relative to the performance of signal work. Under the Railway Labor Act, this Division is required to give effect to the collective Agreement and adjudicate this dispute in accordance therewith. The collective Agreement fails to support the Employees' claim and same should be denied.

Carrier affirms that all data in support of its position has been presented to the other party and made a part of the particular question in dispute.

OPINION OF BOARD:

FACTS

On or about September 1, 1956, the Carrier assigned the maintenance of the telephone and telegraph lines on the Chicago Great Western Railway Company to other than Signal Department Employees.

POSITION OF EMPLOYEES

The maintenance of the telephone and telegraph lines and equipment has been assigned to and performed since 1910 by Employees of the Brotherhood of Railway Signalmen. As a result of this removed from the duties of the Signal Department, five Signal Maintainer positions were abolished.

The Scope Rules under the covering Agreement read as follows:

"SCOPE

"This agreement governs the rates of pay, hours of service and working conditions of all employees in the Signal Department (except supervisory forces above the rank of foreman, clerical forces and engineering forces) performing the work generally recognized as signal work, which work shall include the construction, installation, maintenance and repair of signals, interlocking plants, highway crossing protection devices and their appurtenances, wayside train stop and train control equipment, car retarder systems, centralized traffic control systems, signal shop work, and all other work generally recognized as signal work.

"It is understood the following classification shall include all the employees of the signal department performing the work enumerated under the heading of 'Scope'."

Bulletins advertising positions of Signal Maintainers on this property at Dodge Center, Minnesota and New Hampton, Iowa dated March 16, 1956, and June 23, 1952, respectively are reproduced as follows and identified as Brotherhood's Exhibit No. 2, and No. 3, respectively.

"BROTHERHOOD'S EXHIBIT NO. 2

**"CHICAGO GREAT WESTERN RAILWAY COMPANY
 "OFFICE OF DIVISION ENGINEER
 "MINNESOTA DIVISION**

"Bulletin No. 312

"St. Paul, Minn., March 16, 1956.

"TO EMPLOYEES CONCERNED:

"Account illness of G. H. Lewis the following position is hereby advertised for bids in accordance with the Signal Department Employees' Agreement. Applications will be received up to 12:00 o'clock noon, March 26, 1956.

"TITLE OF POSITION	Signal Maintainer
HEADQUARTERS	Dodge Center, Minn.
RATE OF PAY	\$2.166 per hour
HOURS OF SERVICE	8 hours per day
ASSIGNED TERRITORY	Hayfield to Kenyon
REGULAR DAYS OFF DUTY	Sundays, Saturdays and legal holidays
PERMANENT OR TEMPORARY	Temporary
BRIEF DESCRIPTION OF DUTIES	Maintenance of signal apparatus, crossing protection, interlocking plants, train order signals, telephone and telegraph lines and equipment.
	"F. J. Hoffman Division Engineer

cc - General Chairman"

"BROTHERHOOD'S EXHIBIT NO. 3

**"CHICAGO GREAT WESTERN RAILWAY COMPANY
 "Office of Division Engineer
 "Minnesota Division**

"Bulletin No. 86

"St. Paul, Minn., June 23, 1952

"TO EMPLOYEES CONCERNED:

"Account retirement on disability of A. C. Olson, the following position is hereby advertised for bids in accordance with the Signal Department Employees' Agreement. Applications should be sent to the undersigned, where they will be received up to 12:00 o'clock noon, July 3, 1952:

"TITLE OF POSITION	Signal Maintainer
HEADQUARTERS	New Hampton, Iowa
RATE OF PAY	\$1.951 per hour
HOURS OF SERVICE	Eight hours per day
ASSIGNED TERRITORY	New Hampton to McIntire
REGULAR DAYS OFF DUTY	Saturdays, Sundays, and legal holidays
PERMANENT OR TEMPORARY	Permanent in accordance with amended Rule 62
BRIEF DESCRIPTION OF DUTIES	Maintenance of automatic signals, crossing protection, automatic interlocking, telephone and telegraph lines and equipment.
	"F. J. Hoffman Division Engineer

cc - General Chairman"

The following is taken from the Organization's Submission on record page 14, 15, 16.

"In order to enlighten the Board on the events that took place that ultimately led to this arbitrary action by the Carrier, the Brotherhood will briefly cite the facts as revealed by the record. The record reveals that on October 15, 1953, the International Brotherhood of Electrical Workers was certified by the National Mediation Board as the authorized representative of certain employees on this property who had not been previously represented by any organization. The duties of this small group of unrepresented employees consisted of maintaining the communications lines on the part of the Carrier's property that was not equipped with automatic signaling. The territory on which these employees maintained the communication lines was territory on which there were no Signal Department employees working due to it being non-sigaled territory. This particular territory was from Hayfield, Minn., to Omaha, Nebr., Clarion, Iowa, to Oelwein, Iowa, Oelwein, Iowa to Waterloo, Iowa, and Sumner, Iowa, to Bremer, Iowa. This territory comprised but a small part of this Carrier's property. On all of the rest of the property, which contained automatic signaling, the communications lines (telegraph and telephone lines) were being maintained by the employees of the Signal Department. In fact, in searching the records we find that about 1916 automatic signaling was installed between St. Paul, Minn., and Oelwein, Iowa. At that time the maintenance of the telephone and telegraph lines was assigned to the Signalmen.

"Soon after October 15, 1953, negotiations began between the Carrier and the I.B.E.W. concerning the rates of pay, rules, and working conditions of this small group of employees. The Carrier was unable to reach an agreement with the I.B.E.W. with respect to a scope rule covering these employees due to the fact that the work that the I.B.E.W. was attempting to claim was at that time and had

for over thirty-five years been performed by Signalmen. On September 23, 1955, President Jesse Clark of the Brotherhood of Railroad Signalmen of America wrote Secretary E. C. Thompson of the National Mediation Board and emphatically stated the position of the Brotherhood with respect to the work involved in this dispute which the Signalmen had been performing for the past several years.

'September 23, 1955

Mr. E. C. Thompson, Secretary
National Mediation Board
Washington, D. C.

'Dear Mr. Thompson:

'It has just come to our attention that Mediator Ross Barr will be in Kansas City, Mo., on Monday, September 26, 1955, to assist in the preparation of an arbitration agreement between the Chicago Great Western Railroad and the I. B. of E. W., covering a dispute between these parties relative to the negotiation of a Scope, and perhaps other rules of an agreement, applicable to employees represented by the I. B. of E. W.

'Obviously the B. R. S. of A., is not a party to these proceedings, nor do we desire to become a party. We therefore carefully urge that this communication be not misunderstood. We are not interfering with the negotiations of any carrier or organization in the handling of their affairs, nor do we desire to in any manner interfere with your honorable Board performing its functions.

'We must point out, however, that the employees represented by the B. R. S. of A., will in no way be obligated or bound by any agreement between the aforementioned carrier and organization, irrespective of assistance rendered by the Board or by Arbitration or otherwise.

'The facts are signal line work is traditionally covered by the Scope of Agreements between the carriers and the Signalmen's Brotherhood. Whether it is specifically spelled out in the Scope of our Agreements or not it is generally recognized as signal work and comes within the purview of our agreements and we shall not relinquish jurisdiction over it.

'On the Chicago Great Western Railroad the employees we represent have performed this and other similar line work for many years, and as a matter of fact, they have performed communication line work for as far back as 1910. It has been recognized as coming within the jurisdiction of our craft and it has been performed for many years in accordance with the provisions of our agreement with the carrier.

'Accordingly we reiterate any agreement made between other parties or the carrier and another organization tending to change this long established and recognized practice

shall not be binding on us and the interest of the employes we represent will be zealously preserved and protected by drastic action if necessary.

Very truly yours,

/s/ Jesse Clark
President

'cc: R. B. LeBaron, General Chairman
H. E. Van De Walker, Local Chairman'

"The above-quoted letter reveals that the Signalmen's Organization was not relinquishing its established right of performing the communication work (the maintenance of the telephone and telegraph lines and equipment) that it had been performing since 1910."

The Organization in support of its position quotes from Award No. 8207 rendered under date of January 10, 1958 as follows:

"The undisputed facts in this case clearly resolve the question of tradition, practice, and custom on this Carrier. One of the Agreements was entered into in 1926 and the other in 1928. One had thus been in effect for 24 years and the other for 26 years before the instant claims were presented. During all that time, and in fact since 1924, conductors have been copying train orders at telephone booths under similar circumstances to those involved in this case. They were doing so at the time the Agreements were negotiated and executed. **Parties are generally held to contract in the light of conditions, practice, and customs existing at the time, and an intent to effect a change in them may not be left to inference but must be expressed in clear language.**" (Emphasis ours.)

POSITION OF CARRIER

For many years prior to September 6, 1956, the maintenance of Carrier owned telephone and telegraph lines was performed by two groups of Employes i.e. linemen and signalmen. The former group (linemen) was not represented by any Organization until October 15, 1953 when the I. B. E. W. was certified by the National Mediation Board. Soon thereafter negotiations began between the Carrier and the I. B. E. W. concerning rates of pay, rules and working conditions of these Employes. Carrier was unable to reach Agreement with the I. B. E. W. with respect to two rules i.e. Classification of Work or Scope Rule and an Assignment of Work Rule, in view of the fact that a portion of the work was claimed by the B. R. S. A. In order to preserve the status quo which existed at the time the I. B. E. W. was certified to represent Linemen, Carrier proposed the following:

"With reference to Agreement entered into this date between the C. G. W. Railway Company and the I. B. E. W. governing rates of pay, rules and working conditions of Line Gang Foremen, Linemen and Helpers, it is understood that said Agreement is not intended and does not change the practice of having employes of other classifications engage in line work up to fifty (50) per cent of their time."

The I. B. E. W. declined to accept the Carrier's proposal stating that on many railroads linemen exclusively were performing the work in dispute. They further pointed out that communication line work (maintenance of tele-

phone and telegraph lines) was not included in the scope of the Agreement between the Carrier and the B. R. S. A.

"On April 27, 1956 Carrier and the I.B.E.W., with the assistance of the National Mediation Board entered into an arbitration agreement. Item Fourth of the Arbitration Agreement is shown below:

"The specific questions to be submitted to the Board for decision are as follows:

'1. What coverage shall the scope rule provide for employees of the Chicago Great Western Railway Company, represented by the International Brotherhood of Electrical Workers pursuant to National Mediation Board Certification Case No. R-2634 dated October 15th 1953, copy attached.

'2. Shall the employees represented by the International Brotherhood of Electrical Workers pursuant to the National Mediation Board Certification Case No. R-2634 dated October 15th 1957 have exclusive right to the performance of work determined in Item 1 above.'"

"Hearing on Arbitration Case No. A-4557 closed at 1:05 P. M., August 3, 1956. Chairman of the Arbitration Board received the following Western Union telegram from President Jesse Clark of the I.B.E.W. (Sic) Brotherhood of Railroad Signalmen of America.

'CHICAGO, ILLINOIS AUG. 3 11:20 A. M.
CARROLL R. DAUGHERTY, CARE D. K. LAWSON
PERSONNEL OFFICER—CHICAGO GREAT WESTERN RY. CO.
700 MULBERRY ST., KSC

'WE UNDERSTAND YOU ARE SERVING AS THE NEUTRAL ARBITRATOR IN A DISPUTE BETWEEN THE CHICAGO AND GREAT WESTERN RY AND THE INTL BROTHERHOOD OF ELECTRICAL WORKERS INVOLVING THE NEGOTIATION OF A SCOPE RULE. WE FURTHER UNDERSTAND CARRIER IS USING MY COMMUNICATION ADDRESSED MR. E. C. THOMPSON SECY NATL MEDIATION BOARD DATED SEPT 23 1955 IN SUPPORT OF ITS POSITION. WE WANT IT DISTINCTLY UNDERSTOOD THAT OUR BROTHERHOOD IS NOT CLAIMING JURISDICTION OVER COMMUNICATION WORKS AS SUCH INVOLVED IN THIS DISPUTE. HOWEVER OUR RIGHT TO PERFORM SIGNAL WORK AS OUTLINED IN OUR CURRENT AGREEMENT MUST BE RECOGNIZED.

'—JESSE CLARK, PRESIDENT
BROTHERHOOD OF RAILROAD SIGNALMEN
OF AMERICA'

"Board of Arbitration met at 9:00 A. M., August 4, 1956 and at approximately 3:00 P. M. that date handed down its award, pertinent portions of which are shown below:

'Beginning August 2, 1956, and continuing through August 3, 1956, the Board of Arbitration heard, under oath, the witnesses of the parties and received their exhibits, and granted a full and fair hearing, including an opportunity to present evidence in support of their respective claims, and to present their cases by representatives of their choosing, and heard their arguments.

'Thereupon, and upon full consideration of all the evidence, exhibits, and arguments presented to it, the Board finds the following rules to be warranted thereby, and hereby, on this 4th day of August, 1956, makes its award under said agreement and files the same together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of the arbitrators, with the Clerk of the District Court of the United States for the Western District of Missouri, Western Division, wherein the arbitration was entered into:

'AWARD

'In answer to the first specific question posed in Section Fourth of the Arbitration Agreement set forth above, the Board of Arbitration in this case writes the following Scope Rule and directs the parties to include same in their Agreement:

'RULE

'CLASSIFICATION OF WORK SUBJECT TO THIS AGREEMENT

'This Agreement governs the rates of pay, hours of service, rules, and working conditions of the Foremen, and/or Lead Linemen, Linemen and Helpers who are employees of the Chicago Great Western Railway Company and who are engaged in the construction, installation, maintenance, repair, dismantling, or removal of all outside facilities (including pole lines and supports, wires, cables, conduits, and their appurtenances) used for telegraphic and telephonic communications by the Company. No Company employe covered by the Agreement shall have the right to perform (1) work on signal equipment; (2) work now done by the Company's communications technicians and the telegraph and telephone inspectors; or (3) work done under contractual arrangements between the Company and the Western Union Telegraph and Bell Telephone Companies by employees of these latter two companies on lines now owned by said companies.

'In answer to the second specific question posed in Section Fourth of the Parties Arbitration Agreement, the Board of Arbitration in this case writes the following Assignment of Work Rule and directs the Parties to include same in their Agreement:

'RULE

'ASSIGNMENT OF WORK

'Among the Company's employees, except as provided in Section 2 of Rule 2 of the Parties' Agreement, only Foremen

and/or Lead Linemen and Linemen regularly assigned as such and receiving the wage rates specified in Rule 27 for these classes of employes shall be allowed to perform the work set forth as permissible for them in the Scope Rule of this Agreement.'

"The instant claim originated with letter dated December 1, 1956, reproduced below:

"BROTHERHOOD OF RAILROAD SIGNALMEN
OF AMERICA

"Lodge No. 98
December 1, 1956

"Mr. A. Krausman
Division Engineer
Chicago Great Western Ry.
Oelwein, Iowa

"Dear Sir:

"On or about September 1, 1956, the management assigned the maintenance of the telephone and telegraph lines and equipment on the Chicago Great Western Railroad to other than Signal Department employes.

"Prior to September 1, 1956 employes represented by the Brotherhood of Railroad Signalmen of America maintained the telephone and telegraph lines and equipment between St. Paul and Oelwein, (including to Mankato, Red Wing, Rochester, Winona and Osage), Oelwein to Chicago and Waterloo to Kansas City. The maintenance of the telephone and telegraph lines and equipment has been assigned to the employes we represent and has been a established practice for several years. On bulletins issued for position of signal maintainer's on the territory above referred to it is outlined under "Brief Description of Duties", Maintenance of telephone and telegraph lines and equipment.

"As a result of the maintenance of telephone and telegraph lines and equipment being removed from the duties of our employes five (5) signal maintainer's positions were abolished. We hold that work we have done over the years and assigned by bulletin as a part of our duties cannot now be deprived of our employes.

"We, respectfully request that the above referred to work be returned to our employes and the five (5) signal maintainer positions abolished on Bulletin No. 1826 be restored.

"Will you please advise.

"Sincerely yours,

/s/ H. E. Van De Walker
Local Chairman

"cc: Mr. F. J. Hoffman
Division Engineer
St. Paul, Minnesota"

OPINION

We subscribe to the opinion that this Board is without authority to comply with the request of the Organization to reinstate positions as contained in paragraph (b) of claim, to wit

“(b) That the Signal Maintainers’ positions at Dyersville, Iowa; Mingo, Iowa; St. Joseph, Missouri; New Hampton, Iowa; and Rochester, Minnesota, be restored.” (Carrier’s File S-4)

This Division has consistently refused to order the restoration of positions. See Awards 9416 and 10743.

On the merits of this case it is the opinion of this Board that the Scope Rule, already cited, does not spell out the work claimed in this dispute. The Organization has failed to demonstrate that the work under dispute has been exclusively performed by Employees covered by the existing Agreement and on this Carrier. It is generally recognized that on an industry wide basis the work under this dispute is not generally considered as signal work.

Under the existing Agreement and conditions which prevailed on this property we cannot concede as the Organization contends, that the fact that a position of this work has been performed by Employees for a very long period of time is controlling.

We concur with the opinion expressed in Award 7031.

“It appears clear to us that the work was not the exclusive work of any craft. Where work may properly be assigned to two or more crafts, an assignment to one does not have the effect of making it the exclusive work of that craft in the absence of a plain language indicating such an intent. Nor is the fact that work at one point is assigned to one craft for a long period of time of controlling importance when it appears that such work was assigned to different crafts at different points within the scope of the agreement.”

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 (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October 1962.