

Award No. 11369

Docket No. SG-11111

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company, et al. that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, especially the Scope, when it required and/or permitted employes who are not covered by the Signalmen's Agreement to perform signal work at the repair tracks at Sevier, Tennessee, as follows:

December 17, 1957—One employe five hours.

December 20, 1957—One employe three hours and forty-five minutes.

January 11, 1958—Three employes three hours and thirty minutes each.

January 12, 1958—Three employes two hours and thirty-five minutes each.

January 19, 1958—Two or more employes two hours each.

(b) The Carrier now compensate the senior Signal Maintainer, who was available and whose assignment covered the territory when the repairs were made, at the proper rate of pay as covered by the agreement, for the amounts of time as listed in paragraph (a) above.

(c) The Carrier also compensate the senior Signal Maintainer who was available and whose assignment covers the respective territories when the repair tracks are located at Sevier, Tennessee, and Spencer, North Carolina, for all other signal work that is performed at those locations by signal officials and/or others who are not covered by the Signalmen's Agreement, until such time as the proper correction is made and signal employes are permitted to perform the recognized signal work. Claim to be effective sixty days prior to December 30, 1957, and to continue thereafter so long as the viola-

tion is not corrected and those not covered by the agreement are permitted to perform the signal work in violation of the Signalmen's Agreement. Claim to be applicable to each Signal Maintainer assigned, or who may be assigned, to each of the respective territories involved. Carrier to make a joint check of its records to determine those involved, and time worked by others not covered by the Signalmen's Agreement, if there be any question as to a correct settlement in disposing of the claim. (Carrier's file SG-11884)

EMPLOYEES' STATEMENT OF FACTS: Various yards on this Carrier's system include tracks and other facilities that are used by shop forces in repairing damaged and/or worn cars. Ordinarily, a part of each repair track will be under a shed so that work can be performed during all types of weather, while the remainder of the track may be used as storage. Recently, the Carrier has installed additional equipment at some of these repair tracks that will enable the shop forces to move the cars without their having to wait for a switch engine, and provide protection to the employees while they are working on or about the repair tracks. The equipment included electric motors and cables that the shop forces use in moving the cars along the track. The protection devices include blue flags and blue lights, which are generally used by railroads as a signal that men are working on or about the track and no movement of cars and/or engines must be made beyond the point where the blue signal is displayed. In the past, the general manner of handling the blue signals was that an employee would place the signal in place and it would remain there until it was manually removed. The instant dispute involves blue signals and blue lights that are electrically controlled.

The installations at these repair tracks required various types of signal equipment that is ordinarily used in the construction of railway signal systems, including all appurtenances connected with track circuits, such as bond wires, track connections, track batteries and track relays. The entire system required various types of relays, multiple conductor cables, power derails, relay shelters and other appurtenances necessary in the installation of signal circuits.

Inasmuch as the changes to the repair facilities involved several types of work, the Carrier assigned several classes of employees to make the installation. The electricians were assigned to install the electrical equipment and circuits, and the signal forces were assigned to install the signal equipment and signal circuits. However, after the signal equipment and signal circuits were installed, the Carrier arbitrarily assigned employees who are not covered by the Signalmen's Agreement to perform work on the signal equipment that had been installed by signal forces.

On December 13, 1957, Mr. E. C. Melton, General Chairman, filed the following letter of protest with Mr. J. M. Stanfill, Signal and Electrical Superintendent:

"We understand that certain recognized signal work is being diverted and/or assigned to employees not covered by the Signalmen's Agreement, especially at Spencer Yard or Shop area, at or near Salisbury, N. C., and the same will be done at Sevier Yard, at Sevier, Tenn., when such work has been completed, all of which is in direct violation of the agreement.

I have been informed that signal employees, two signal gangs, Mr. E. L. Crowe, and H. M. Rampey, was used at Spencer Yard to in-

ated blue flag here involved merely took the place of the stake type blue flags.

Mechanical Department forces have always maintained and repaired blue flags and equipment. That was all they did on the date here involved when they repaired one of the electrically operated blue flags.

The involved work did not fall under Rules 136 and 137 of the Shop Crafts' Agreement. It was work not contracted to any class or craft of employees. Therefore, the Carrier was free to have it performed in the most efficient and most economical manner. That was precisely what was done on the dates involved in the claim by utilizing Mechanical Department electrical workers in making the necessary repairs.

On the record, the evidence is clear that the effective Signalmen's Agreement was not violated as alleged and that the claim and demand which the Brotherhood here attempts to assert are without any basis whatsoever.

CONCLUSION

Carrier respectfully submits that:

(a) The claim is barred by the plain, unambiguous language of the agreement in evidence as interpreted by prior awards of the Board.

(b) The effective Signalmen's Agreement was **not** violated.

(c) Signalmen had no contract right to perform the here involved work, nor did electrical workers have any contract right to perform it. It was work which the Carrier has not contracted to either class or craft of employees.

(d) The fact that signal forces assisted electrical workers and others when installing the electrical equipment at the car repair tracks did not confer upon them any contract right to maintain electrical equipment under jurisdiction of the Mechanical Department. Maintaining the electrical equipment is **not** generally recognized signal work or signal work of any type whatsoever.

If, after notice has been given the Electrical Workers as required by Section 3 First (j) of the Railway Labor Act, and they are afforded the opportunity of being heard, the Board assumes jurisdiction, it cannot do other than make a denial award, as to part (a) of the claim and demand for an award of any other type would be contrary to the plain, unambiguous language of the agreement in evidence. Parts (b) and (c) should be dismissed for want of jurisdiction as they are barred.

All evidence here submitted by Carrier in support of its position is known to employe representatives.

Carrier, not having seen the Brotherhood's submission, reserves the right after doing so to make response thereto and present any evidence necessary for the protection of its interests.

OPINION OF BOARD: In 1957 Carrier mechanized its freight car repair facilities at five of its major terminals. The five include facilities at Knoxville, Tennessee (Sevier Yard) and Spencer, North Carolina (Spencer Yard) which are the sites of the claimed contract violations.

Employees of several different crafts (as well as contractors) were used by Carrier to install the mechanized repair facilities. Among them were some employees covered by the Signalmen's Agreement.

Prior to mechanization, cars in the repair yards were moved from place

to place therein by switch engines. Under the mechanized operation freight cars are brought into the repair shed by cables pulled by power of electric motors. When repaired the cars are moved out the other end of the repair shed by cables activated by electric motors.

All controls for the electrically operated motors are of the push-button type located on panels underneath the repair shed. The operation involved was not in existence on February 16, 1948, the effective date of the Signalmen's Agreement, or on October 23, 1953, the effective date of the revised Scope Rule of the Agreement.

The gist of the Signalmen's contention is that the maintenance and repair of all the equipment installed in the facilities by Signalmen comes within the Scope Rule of its Agreement. This it says the Carrier "recognized" by having employes covered by the Agreement do the installation work. Carrier replies: "Such work has not been contracted to signalmen. There are no signals at the car repair facilities at Sevier Yard; nor does the installation constitute a signal system. Repairs to the electrical equipment did not constitute a performance of signal work."

Carrier's denial of Signalmen's averment that the maintenance and repair work on the equipment installed by employes under the Signalmen's Agreement is within the Scope Rule of that Agreement places the burden of proof on the Signalmen. This burden can be satisfied only by a preponderance of the evidence of record.

We hold that the undisputed fact that Signalmen installed the equipment does not prove, *ipso facto*, that its maintenance and repair comes within the Scope Rule of Signalmen's Agreement; nor, does it constitute proof of an admission by Carrier that such work is within the Scope Rule.

The record, as a whole, does not contain clear and convincing evidence, of probative persuasiveness, that the work is within the intendment of the Scope Rule. We hold, therefore, that Signalmen has not proven its claim by a preponderance of evidence. See, and compare with, Awards 10725 and 11162. Accordingly, we will dismiss the claim.

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 upon the evidence of record we cannot make a finding as to whether Carrier violated the Agreement.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April, 1963.