

**Award No. 11526**

**Docket No. SG-10926**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**David Dolnick, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA**

**SOUTHERN PACIFIC COMPANY (Pacific Lines)**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Southern Pacific Company:

(a) The Southern Pacific Company violated the current Signalmen's Agreement dated April 1, 1947 (revised August 1, 1949) when it failed and/or declined to apply the Scope, Classification, Hours of Service, Call, Bulletin, Assignment, Promotion and Seniority Rules, or other provisions of the agreement, by not assigning certain generally recognized signal work since July 23, 1957, to employees covered by the Signalmen's Agreement. Specifically, the signal work involved is the repairing of Signal Department meters.

(b) Mr. A. R. Rath, Signalman, Western Division Signal Shop, be paid for the same number of hours at the time and one-half rate for the same time as was charged by the Pacific Electric Instrument Laboratory for the repairs to Signal Department meters from July 23, 1957, until such time as this work is returned to West Oakland Signal Shop. Claim is also made for all time used by the Jaime Ruiz Instrument Company of Los Angeles and/or Quality Electric Company, Los Angeles, California, in repairing Signal Department meters sent them by this Carrier subsequent to July 23, 1957, at the time and one-half rate of pay, until such time as the work of repairing the meters is returned to the Signal Department.

[Carrier's File: SIG 152-50]

**EMPLOYEES' STATEMENT OF FACTS:** Since about the year 1927, the Signal Shop on the Western Division, located at West Oakland, California, had been repairing meters that were used by Signal Department employees. For many years, from about 1927 until about 1941, the meter repair work was done by Henry Clark, then an employee of the Signal Department. Following Clark's retirement about 1941, and until December, 1956, the meter repair work was done by Dave Brown, also an employee of the Signal Department. Following the retirement, December, 1956, of Mr. Brown, the work of repairing meters was assigned to Signalman A. R. Rath, an employee of the West Oakland Signal Shop.

**OPINION OF BOARD:** The claim alleges that the Carrier violated the Agreement when it failed to assign "certain recognized signal work since July 23, 1957, to employes covered by the Signalmen's Agreement". The work involved is the repairing of volt ammeters.

Employes allege that "the Signal Shop on the Western Division, located at West Oakland, California, had been repairing meters that were used by Signal Department employes" since about 1927. Carrier denies that the repair of meters was done exclusively at West Oakland and contends "that the Company has consistently contracted out the repairs of most of the volt-ammeters used in carrier's Signal Department." There is, as the Carrier points out "some dispute as to how long said work has been performed and by whom . . ."

It is the position of the Employes that work of repairing meters "is generally recognized signal work . . . and comes under the Scope Rule of the current Signalmen's Agreement." The Scope Rule reads:

"This agreement shall apply to work or service performed by the employes specified herein in the Signal Department, and governs the rates of pay, hours of service and working conditions of all employes covered by Article 1, engaged in the construction, reconstruction, installation, maintenance, testing, inspecting and repair of wayside signals, pole line signal circuits and their appurtenances, interlocking, spring switch locking devices, highway crossing protection devices and their appurtenances, wayside train stop and train control equipment, detector devices connected with signal system, car retarder systems, centralized traffic control systems, signal shop work and all other work that is generally recognized as signal work.

It is understood the following classifications shall include the employes performing the work enumerated under the heading of 'Scope'."

This Rule does not specifically state that Signalmen shall repair volt-ammeters. It does say that the Agreement shall apply to "all other work that is generally recognized as signal work."

It is a well established principle of this Division, that where there is no express reference to the work in the Scope Rule, that the intent of the parties can be only ascertained by past practice, custom and usage on the property. Awards 8001 (Bailer), 11028 (Hall), 10613 (Sheridan), 10715 (Harwood), 10954, 11120 and 11126 with the same Referee, 11128 (Boyd), 10931 (Miller), 10585 (Russell), 9625 (Begley), 7861 (Shugrue), 7806 (Carey) and others.

Employes contend that "this work has been done by the West Oakland Signal Shop for thirty years or more and a precedent had been established." Carrier argues that nowhere do the Employes "assert that the work was performed exclusively by them." We can determine the past practice, custom and usage on the property only from the record in this case.

In processing the claim on the property Carrier's Superintendent wrote on September 17, 1957, in part, as follows:

"We have reviewed the matter and repairs to meters are being handled by the Store Department. We do not find that repairs to meter

come within Scope of the Signalmen's Agreement, and they can be purchased or repaired where Store Department desires.

Therefore, claim is denied."

On January 10, 1958 Carrier's Assistant Manager of Personnel wrote to Employees' General Chairman, in part, as follows:

"There is nothing in the Scope Rule of the agreement covering employees of the Signal Department which contemplates meter repair work belongs to signalmen. Such work is not generally recognized as signal work, and our signalmen have never enjoyed an exclusive right to such work. While it is true that for many years a signalman employed at West Oakland, Mr. Dave Brown, was given meter repair work to do, in addition to his other duties, it is also true that during the time Mr. Brown was performing such work much of our meter repair work was being sent out to meter repair companies. Furthermore, the Company's practice of having meters repaired by independent meter repair companies was well known to the employees for years prior to the general revision of the agreement covering signalmen in 1947; yet no attempt was made to amend the scope rule at that time, nor was any objection to the practice raised by the employees."

Employees rely, in part, on a letter dated July 11, 1957, from Assistant General Storekeeper, S. L. Bouque, to certain employees of the Stores Department quoting from a letter dated July 9, 1957 from J. M. Day addressed to all Assistant General Storekeepers. Part of Mr. Day's letter reads as follows:

"The present practice was to have all meters sent to West Oakland Store Section 25, and they would handle with the Signal Shop for the necessary repair of meter and return to the Division. Effective at once, the San Joaquin, Los Angeles, Yuma, Tucson, and Rio Grande Divisions will send all meters needing repair to the Los Angeles Store, covered by Form CS-4915 and CS-4206. Mr. Pearce will use yearly orders L-73-43-659, with Jaime Ruiz Instrument Company or L-73-43-527 with Quality Electrical Company, to have the necessary repairs to the meters. The balance of Divisions, Coast, Portland, Sacramento, Salt Lake, Shasta and Western will forward meters needing repair to West Oakland General Store, Section 25. Mr. Bouque will use Standling Order 75-43-548 with Pacific Electric Instrument Laboratory of San Francisco to facilitate the repair of these meters." (Emphasis ours.)

This letter unquestionably establishes the fact that prior to July 9, 1957 all meters were sent to West Oakland for repair. But that is not the sole issue. The basic question is whether Signalmen had the exclusive right to repair meters.

The parties agree that Signalman, Dave Brown repaired meters in the Signal Shop at West Oakland, California for many years prior to his retirement on December 31, 1956. Employees say he did that work since 1941. This date was never challenged by the Carrier. After Brown retired, Claimant, who was assigned as Signalmen, in West Oakland Shop repaired meters from January 1 to October 10, 1957 when the new order was issued by Carrier.

The fact that Dave Brown possessed special mechanical talent and that the Claimant's work was not satisfactory is irrelevant. If Claimant was not able to perform the work required, Carrier could have replaced him in accordance with the terms of the Agreement. It is our responsibility to decide whether meter repair work "is generally recognized as signal work."

Mr. Day's letter of July 9, 1957, while admitting that it was the practice to send meters to West Oakland for necessary repairs, also indicates that there were yearly order forms used to send meter repair orders to independent meter repair companies. The letter from Carrier's Assistant Manager of Personnel dated January 10, 1958, and previously quoted, states first, that meter repair work done by Dave Brown was "in addition to his other duties" and second, that "the practice of having meters repaired by independent meter repair companies was well known to the employees for years prior to the general revision of the agreement covering signalmen in 1947 . . ."

In its Ex Parte Submission, Carrier says:

"In San Francisco, the Pacific Electrical Instrument Laboratory regularly did major repair work on volt-ammeters used in carrier's Signal Department from 1941 until December of 1957, when carrier commenced sending the repair work to Western Electrical Instrument Corporation, which guarantees that volt-ammeters repaired by it shall be comparable to a new instrument. In Los Angeles area volt-ammeters were sent out to two concerns, the Quality Electric Company and the Jamie Riuz Instrument Company, and those concerns are still performing that work. Also in the Portland area, volt-ammeters in need of major repairs were sent to an electrical instrument repair shop for such repairs at Portland."

It is unfortunate that the record does not contain more specific and detailed evidence on the subject of past practice, custom and usage on the property. But the fact remains that the Employees never categorically denied Carrier's allegations that meters were repaired by independent companies at the same time that they were also repaired at West Oakland. In its Rebuttal Statement Employees say:

"On this Carrier's system, there are ten Divisions and each Division has its own seniority group. The employees of the West Oakland Signal Shop only hold seniority on one Division. As stated in Carrier's letter of July 11, 1957, all Divisions would send their meters to West Oakland Store with the understanding that the Store would handle with the West Oakland Signal Shop for the necessary repairs. Under those arrangements the employees of the other Divisions assumed that the meter repair work was being properly performed by those employees covered by the Signalmen's Agreement. At the same time, the signal employees of the West Oakland Signal Shop assumed that all meters that were sent from other Divisions were being sent to their shop for repairs. Inasmuch as the Brotherhood does not have access to Carrier's record, and this Carrier's system extends for thousands of miles, it would have been practically impossible for the signal employees to trace every meter and determine who repaired them. . . . The manner in which the Carrier claims it handled the meter repair work in the past shows that the claimant had no way of knowing that some signal work

may have been performed by outside firms, as stated by the Carrier." (Emphasis ours.)

This statement is not a denial that meter work had been done by independent companies. Nowhere in the record is it affirmatively established that Signalmen exclusively repaired meters. An affirmative showing is necessary in view of the fact that the Scope Rule does not specifically include this work as belonging to Signalmen. Awards 8001 (Bailer), 7031 (Carter), 11032 and 10990 (Hall), 10867 (Kramer), 11639 (Boyd) and others. It is not enough merely to disclaim knowledge of the fact that independent companies had repaired meters.

The Carrier in its Ex Parte Submission also alleges that during a discussion of this claim on the property Carrier mentioned that a Signalman, Henry Neff, who was employed at the Sacramento Shops, repaired meters. This work was later discontinued and meters were thereafter repaired by contractors. Employees did not protest and filed no claim for the work on behalf of Henry Neff or any other employee at the Sacramento Shops. To this allegation the Employees replied:

"It was assumed by the employees of the Sacramento Signal Shop that the work was merely being transferred to another employee covered by the same agreement."

There is no basis for such an assumption. The Employees should have investigated and taken appropriate action if any existed.

The Agreement between the parties is system-wide. It is not confined solely to Sacramento or to West Oakland or to any one of the Carrier's Divisions. It includes them all. While it is true that the Employees do not have access to all of Carrier's records, and that it is sometimes difficult to know all that is happening in the system, it is nevertheless, the obligation of the Employees to make certain that the work belonging to Signalmen is specifically set out in the Agreement. If it is not so set out, then the work belongs to them only if by practice, custom and usage of on the property, work has been done system-wide exclusively by Signalman. See Awards 8207 (McCoy), 5404 (Parker), 7806 (Carey) and 4208 (Robertson).

We cannot agree with the Employees that the work belongs to Signalmen at West Oakland even if meters were repaired by contractors for other Shops or for other Divisions. This is not the position of this Board. We have consistently held to the contrary.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1963.