

Award No. 11711

Docket No. SG-11294

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railroad Company that:

(a) The Carrier violated and continues to violate the current Signalmen's Agreement when other employees were assigned to unload signal material from freight cars on the spur track and store same in the signal storeroom, "Glass House," Cumberland, Md.

(b) The members of Gang No. 3 be allowed an amount of time equal to that consumed by other employees in performing this signal work, commencing December 16, 1957, and continuing until such time as practice is discontinued.

EMPLOYEES' STATEMENT OF FACTS: Commencing early in 1957 the Carrier was engaged in a number of signal construction projects in the vicinity of Cumberland, Md. Included in the new construction projects was the installation of new signal towers at Patterson Creek, and new car retarders and various other signal improvements at West Bound receiving yard at Cumberland, Md. Large amounts of signal material were required in these projects and the Carrier established a new signal storehouse at Cumberland, Md., in a building known as the old Glass House. Signal material was shipped direct from the various signal manufacturers to the Glass House signal storehouse, where it was unloaded and subsequently distributed to the various field locations where it was used in connection with the several signal projects mentioned above.

The Carrier appointed Mr. J. D. Iden from the Signal Engineer's office as Material Inspector to be in charge of the signal material that was received at Glass House. Mr. Iden was also responsible for its distribution to the various field locations where it was used in the various signal projects.

During July, 1957 the Carrier assigned track laborers to unload certain signal materials at Glass House from the freight cars and truck it to the various points along the line where it was used in the various signal projects.

direct supervision of Materials Inspectors and are not, as contended, under the supervision of Signal Construction Supervisors, and that, in any event, the titled classification of supervision does not control the craft classification of employees working under such supervision, citing numerous incidents whereby this is true, and citing on behalf of Carrier, Awards 4992, 5225, 6076 and 6179, to the effect that it is the function of Management to determine supervisory requirements. Also that the mere handling of signal materials is not signal work. Citing Award 5046. That in Rule 6, re: handling of material is in its nature, if correctly defined, permissive and does not have mandatory application by reason of the use of the word 'may.' Citing Rule 30 of the Agreement and citing Award 6384 on behalf of the Carrier.

It is the opinion of this Division that the work performed by these colored laborers is unskilled work and was not intended by the parties to have such a meaning as herein contended by Petitioners.

Several other phases of this dispute are dealt with at some length in the record and in argument presented in support of, and in resistance to this claim; however, it is deemed that no useful purpose would be served in going into detail on these interrelated matters. Suffice to say the work in question is not considered to be within the contemplation of the parties under the rules of this Agreement as the same relates to the facts presented herein."

The claims in Award 6512 were denied.

CARRIER'S SUMMARY.

The factual record in this case is not in dispute. The Awards quoted and cited above are precisely in point on the principles involved and at issue in the instant case. The Findings in these Awards are of significant precedent value in establishing, first of all, that the work here is unskilled work not coming within any exclusive reservation of the Signalmen's Agreement, and, secondly, that simply because the materials thus unloaded may at some future time be used by signalmen by no means makes their unloading an exclusive reservation of the Signalmen's Agreement. The claim here at both Parts (a) and (b) is wholly without merit. The Carrier respectfully requests that this Division so hold and that the claim in its entirety be declined.

OPINION OF BOARD: The essential facts are not in dispute. Early in 1957, Carrier commenced work on several signal construction projects on its Cumberland Division which included "Cumberland Yard improvements at South Cumberland, changes in the signaling between Orleans Road, West Virginia and Okonoko, West Virginia and the remote controlling of the interlocking plants at McKenzie, Maryland and Okonoko from Patterson Creek, West Virginia." Large amounts of signal material were requested for these projects. To properly store this material, the Carrier used a building at Cumberland, Maryland, which they called the Glass House.

Signal material for the project, ordered from the manufacturers, was shipped to the Glass House where it was unloaded by Maintenance of Way employees. This signal material was thereafter from time to time handled and distributed to the various field locations where it was used to erect the signal projects. The handling of the signal material from the Glass House, including loading and transporting it to the place where it was used, was done by signalmen.

Employees contend that the unloading of the signal material at the Glass House should have been done by signalmen because the Glass House was not a general storehouse, but, rather, a designated place on the project already planned and in operation. The Employees argue that the signal material delivered to the Glass House was not material which would be used by signalmen some time in the future, but since the project was already planned and in operation, and since the material for that project was to be used as needed, this was signal material to be presently used.

Employees also contend that Claimants were entitled to the work under Rule 6, which reads as follows:

"RULE 6

SIGNAL HELPERS

An employee assigned to help signal men, or signal maintainers, shall be classified as a Signal Helper. A signal helper when working together may perform such work as filling and cleaning lamps, cleaning and oiling interlockings, excavating, handling material, and such bonding of track as does not conflict with Paragraph (b), Rule 4, of this Article. Helpers shall not be permitted to do work recognized as that of other classes named in this Article."

It is the employees' position that "handling material" as used in Rule 6 is work which belongs to the employees covered by the agreement.

The record shows that the Glass House is a two-story brick building in Cumberland, Maryland, which was appropriated by the Carrier for the purpose of receiving, storing and handling signal material for the project above described. Some track material was also stored in that building, but the bulk was signal material used for this project.

Maintenance of Way laborers unloaded the material from the cars and placed it in the Glass House. As and when the material was needed at the various construction points, it was handled by signal employees covered by the signalmen's agreement.

We have, on several occasions, considered similar issues. In Award 5046 (Carter), an electrician and a helper transported telegraph and signal material between Signal Maintainers' stations. It was not hauled to any construction site. We said:

"Until it becomes an integral part of a signal construction or maintenance job, the signalmen have no exclusive right to its handling. Consequently, work in connection with the moving of material to be used by signalmen at some future time is not exclusively signalmen's work. But work in connection with the moving of such material from a warehouse or material yard to a signal construction or maintenance job for immediate use on such job is the exclusive work of signalmen."

In Award 6512 (Rader), petitioner contended that Carrier violated the agreement when it permitted laborers not covered by the agreement to handle signal material. The work by the laborers was done at the storehouses. The storehouses received shipments of material from manufacturers and these were subsequently reshipped to points where construction work was done. In that award, we said:

"It is denied that such work comes within the Scope and Rule 6, and that these Storehouses and affiliated Reclamation Shops are Signal Department facilities. Also these facilities are under the direct supervision of Materials Inspectors and are not, as contended, under

the supervision of Signal Construction Supervisors, and that in any event, the titled classification of supervision does not control the craft classification of employes working under such supervision, citing numerous incidents whereby this is true and citing on behalf of Carrier, Awards 4992, 5225, 6076 and 6179, to the effect that it is the function of Management to determine supervisory requirements. Also that the mere handling of signal materials is not signal work. Citing Award 5046. That in Rule 6, re: handling of material is in its nature, if correctly defined, permissive and does not have mandatory application by reason of the use of the word 'may.' Citing Rule 30, of the Agreement and citing Award 6384 on behalf of the Carrier."

"It is the opinion of this Division that the work performed by these colored laborers is unskilled work and was not intended by the parties to have such a meaning as herein contended by Petitioners."

The signal material shipped to the Glass House and there unloaded was not to be immediately used on project. The material was used from time to time as needed at the various project locations. Some of the material stored at the Glass House was not actually used on the construction project for many months. What materials were needed, when they were needed, and when used, was determined by Carrier's engineers and signalmen as the construction jobs progressed. The material was not used immediately as contemplated in Award 5046.

Whether specific signal material for a planned project is stored in a general storehouse or in a special building designated to keep the material until used, is immaterial. The right of the signalmen to handle this material arises only when that material is handled, loaded and transported to the construction project for immediate use. To that end the Carrier complied with the terms of the Agreement.

The provisions of Rule 6, relating to the handling of the material, is permissive, not compulsory.

For the reasons herein stated, we conclude that there is no merit to the claim.

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 the 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 5th day of September 1963.