

Award No. 11726

Docket No. SG-11244

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jim A. Rinehart, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

UNION RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Union Railroad Company that:

(a) The Carrier violated the provisions of the Signalmen's Agreement when it caused a position assigned to and filled by a Signal Department employe to be changed and assigned to an employe of another craft.

(b) Mr. R. S. Shaffer, a former occupant of the position in question, be allowed an amount of hours equal to that spent by other employes on the position at the current Signalmen's rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Prior to November 29, 1957, Mr. R. S. Shaffer had been regularly assigned to a Signalman position in the Signal Office at MO Tower. Bulletin No. 13, which is a copy of a bulletin on which this position was advertised, is attached hereto and identified as Brotherhood's Exhibit No. 1.

About November 29, 1957, Mr. R. S. Shaffer, who was also General Chairman at that time, heard a rumor that the Carrier had issued orders to remove the Signalman from the position in the Signal Office and turn the position over to an employe of another craft. As this position had been held by a Signal Department employe for years, even since long before the current Signalmen's Agreement was negotiated, General Chairman Shaffer wrote the following letter dated November 29, 1957, to Mr. B. R. Gould, Vice President and General Manager:

"We have been advised of the advertisement of a position in the Signal Department to employes not covered by the effective Agreement between the Union Railroad Company and the Brotherhood of Railroad Signalmen of America.

The position referred to is now held by R. S. Shaffer, Signalman, who has seniority under the provisions of Rules 8 and 9 of the Agreement.

agreement, to another agreement between the Carrier and U.S.W. Local 3263, which we hold definitely does cover the work in question. Therefore, this award has no bearing.

If the Board proceeds to a decision of the merits of the claim, it should be the Opinion of Board that the clerical work in question, which the Carrier previously outlined, is not signalman's work within the scope of the signalmen's agreement. The claim should be denied because:

1. No rules of the agreement between the signalmen and the carrier have been violated by the Carrier. The rules of the agreement cited by the signalmen do not sustain their position. The clerical work in question is not signalmen's work within the scope of the signalmen's agreement.

2. The clerical position in question is a new one properly filled by a clerk and covered by the clerks' agreement. The old office signalman position was a combination assignment and required the holder of such position to perform signalmen's work. The clerical work of the Telephone Department was not handled by the office signalman. The new position performs only clerical work—full time.

3. The Signal Department force was not reduced. The claimant became a full time signalman starting at the same point—he lost no earnings.

4. Awards of this Division cited by the Carrier uphold the Carrier's position. The awards cited by the signalmen in presenting its claim to the Carrier have been shown to have no bearing and consequently lend no support to the Signalmen's position.

All data contained herein are known to the employees or have been discussed with them.

(Exhibits not reproduced.)

OPINION OF BOARD: In 1950 the parties had a Memorandum of Understanding effective October 1st. Among other provisions was the following:

"It is the intent of the scope rule and it is understood and agreed by both parties that the railroad may continue to employ outside contractors or use employees not coming within the scope of this agreement to perform any of the work set out in the scope rule, consistent with the established practice on this railroad. The performance of any work by contractors, or employees not coming within the scope of this agreement, as set out in the scope rule, will not entitle any Signal Department employee to any additional or penalty payment."

At that time there existed a position designated Signalman (Office), a part of the duties of which consisted of clerical work.

Effective January 1, 1955 the parties made a further Agreement which provided as follows:

"RULE No. 1

"Scope

"(Paragraph (a) revised effective January 1, 1955)

"(a) This agreement governs rates of pay, hours of service and working conditions of employes engaged in the construction, repair, reconditioning, inspection, testing and maintenance of all signals, interlocking plants, centralized traffic control systems, car retarder systems, highway crossing protection signals, bonding of track for signal and interlocking purposes, and such other work as has been generally recognized as Signal Department work on the Union Railroad.

"(b) This scope rule is predicated upon conditions and practices which have been in effect on this property. It is not intended to give the signalmen under this agreement the exclusive right to any additional work nor is it intended to take away from signal forces covered by this agreement any work which they have heretofore generally performed, as covered by Memorandum Agreement dated October 1, 1950."

March 1, 1957 the Carrier decided that the clerical duties had increased so much that it should establish a new position of Clerk to which it would assign work of its former Telephone Department plus the clerical work formerly done by the Signalman (office). In so doing it abolished the position of Signalman (office). The incumbent of that position became a signalman.

This is not a claim for the new position, but a claim for that part of the work of the new position formerly done by Signalman (office).

That brings into force the provisions of the 1955 Agreement.

"nor is it intended to take away from signal forces covered by this agreement any work which they have heretofore generally performed, as covered by Memorandum Agreement dated October 1, 1950."

It is not disputed that Signalmen (office) had long prior to the 1955 Agreement performed the clerical work assigned to the new position in 1957. The 1955 Agreement reserved that work to the signal forces. To nullify such reservation will require negotiation. This is not a case where the work decreased to the vanishing point and the position was therefore abolished. Here the very opposite took place—the work increased. Consequently the work was not abolished, it was merely shifted. That violated the Agreement. Award 7349 (Coffey), Award 5397 (Donaldson).

It is contended by the Carrier that the Petitioner's claim was premature, indefinite, and no Claimants named. Petitioners, on the other hand, contend that Carrier failed to comply with the rules, by not denying the claim within the time limit and by not stating a reason. It is our opinion that the claim is properly before the Board and the issues joined.

The Steelworkers (representing clerical employes) have been notified of this proceedings and have declined to appear.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September 1963.

CARRIER MEMBERS' DISSENT TO AWARD 11726, DOCKET SG-11244

The Majority's interpretation of the rules involved is erroneous. The Carrier never intended to assign clerical duties exclusively to Signal employees. Signal employees do not "generally" perform clerical work. The only work contracted to the Organization by the Carrier was that "which they have heretofore generally performed." We have previously interpreted language similar to this to mean industry-wide. Awards 10804 and 10867. At the very minimum, the system practice should control in construing what work was "generally performed." (Awards 11331 and 10615.) The Petitioner never presented any evidence to show such practice but contented itself with a showing that the office signalman in question had previously performed clerical work. We have repeatedly recognized that clerical work of some type or other is performed by practically all railroad employees, but this does not give them the exclusive right to this work. Citation of authority on this point is hardly necessary. Awards 806 and 7031.

If the Majority had faced up to their responsibility in this case, they would have denied the claim for lack of evidence. For this reason, among others, we dissent.

W. F. Euker

R. E. Black

R. A. DeRossett

G. L. Naylor

W. M. Roberts