

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, 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 the Signalmen's Agreement, especially the Scope, when on or about October 10, 1957, other employees were permitted to install relay case foundations and extensions for the purpose of raising relay instrument cases above flood water at Okonoko, West Virginia.

(b) The employees of Signal Gang No. 4 at the time the violation in paragraph (a) above occurred be allowed compensation for the amount of time equal to that consumed by other employees in performing this work.

(c) The Carrier violated the Signalmen's Agreement, especially the Scope, when on or about December 17, 1957, other employees were permitted to install relay case foundations and extensions for the purpose of raising relay instrument cases above flood water at Patterson Creek, West Virginia.

(d) The employees of Signal Gang No. 3 at the time the violation in paragraph (c) above occurred be allowed compensation for the amount of time equal to that consumed by other employees in performing this work.

EMPLOYEES' STATEMENT OF FACTS: Part of this Carrier's property is located in a valley where the river frequently rises above the level of the main track, and the Carrier decided to place certain of its signal equipment on extensions that would raise it above the flood level. On or about October 10, 1957, the Carrier assigned its Bridge and Building forces to install a relay case foundation at Okonoko, West Virginia. Then, on or about December 17, 1957, the Carrier assigned its Bridge and Building forces to make a similar installation at Patterson Creek, West Virginia. Inasmuch as these foundations were installed for relay cases that contained signal equipment only, and that the work of installing these foundations accrues only to those employees who are covered by the Signalmen's Agreement, Local Chairman B. L. Cowgill presented claims to Division Engineer F. F. Schilt on December 5 and 24, 1957, for the violations on October 10 and December 17, 1957, respectively. Under date of December 16, 1957, Division Engineer Schilt wrote the following letter of denial to Local Chairman Cowgill:

at all its parts, i.e., paragraphs (a), (b), (c) and (d) are wholly without merit and should be denied. The Carrier respectfully requests that this Division so rule and that the claim in its entirety be denied.

OPINION OF BOARD: Incidents of flooding in the Valley of the Potomac River where the main track is located led Carrier to raise the signal equipment above the flood level. On or about October 10, 1957 Carrier assigned its Building and Bridge forces to install a relay case foundation to house signal equipment at Okonoko, West Virginia. Again, on or about December 17, 1957 Carrier assigned its Building and Bridge forces to make a signal installation at Patterson Creek, West Virginia. After the Building and Bridge forces constructed the concrete foundation and erected the steel work, the signalmen placed the relay boxes on the platform and installed and wired the signal apparatus.

Petitioners allege that Carrier violated the Signalmen's Agreement, especially the Scope Rule, when it assigned Building and Bridge employes to install case foundations for the purpose of housing signal equipment only. They maintain that this work accrues to signalmen under the agreement. Claimants support their position by pointing out that the Scope Rule permits but two exceptions, signal bridges and cantilevers; and since relay cases are not one of these exceptions, this work must be performed by signalmen.

Respondent, on the other hand, maintains that the Scope Rule "does not, by specific terms or otherwise, include the construction, installation, or maintenance of structures of this kind," and points out "that the steel towers involved herein are not ordinary relay case installations" and "work coming within the scope of the Signalmen's Agreement must be of a character requiring the exercise to some degree of the skills possessed by signalmen. The character of service here involved did not call into use any of the necessary skills, etc. peculiar to signalmen."

It is apparent that the work in question does not fall under the two exceptions stated in the Scope Rule, but we cannot accept Claimants' interpretation that because the rule does not specifically exclude relay case installations this work must be performed by signalmen exclusively. We do not find explicit language in the Scope Rule vesting signalmen with the full right to construct, install, or maintain foundations of the kind in dispute. The peculiar nature of the foundations and steel erection in question differentiates them from ordinary or normal ground level installations used to house signal apparatus. Claimants' argument that because the foundation served no other purpose than as a part of the signal system there is no reasonable or sensible basis for Carrier permitting other than signalmen to perform the work, overlooks the nature of the foundations and the types of skill required in this construction prior to the installation of the relay case and the wiring of the signal equipment. We do not find that the Scope Rule intended to restrict the work to signalmen only on the basis of the purpose of the foundation. Such a limited interpretation would expect signalmen to go beyond the skills contemplated under the rule in the erection of complex foundations and steel construction. After the completion of the foundations Carrier recognized the area where signalmen had exclusive rights and called upon them to perform the work which accrues to signalmen.

We find that Carrier did not violate the agreement when it assigned Building and Bridge workers to do the foundation work in dispute. The claim is without merit.

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 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of November, 1963.

Dissent to Award 11838, Docket SG-11142

This Award is simply another step in an obvious trend to either destroy Scope Rules or so twist the language as to render them meaningless.

For many years it was universally accepted that an agreement covers all of the work of the class embraced therein unless specifically excepted or subject to some exception recognized by the Board as inherently existent.

The Majority properly recognized that the work involved in this dispute does not fall under the exceptions stated in the Scope Rule. However, the Majority then proceeded to find a way around the Scope Rule by saying "we do not find explicit language in the Scope Rule vesting Signalmen with the full right to construct, install or maintain foundations of the kind in dispute.", which is not only absurd but unrealistic because according to the Majority the only work in connection with " * * * construction, installation, inspecting, testing, maintenance, repair and painting * * * " reserved to Signalmen are those individual items of work explicitly spelled out in the Scope Rule. Owing to the composite nature of signal work the impracticality of such an approach to rule writing is obvious.

Notwithstanding other errors and inaccuracies in the Award, suffice to say that the effect of it is to uphold the Carrier in doing piecemeal what it agreed not to do wholesale; therefore, I dissent.

/s/ G. Orndorff

G. Orndorff
Labor Member