

Award No. 12323
Docket No. SG-6496

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
OF AMERICA**

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

STATEMENT OF CLAIM: Claim of the General Committee, Brotherhood of Railroad Signalmen of America, on the Central Railroad Company of Pennsylvania:

(a) That the current Signalmen's Agreement was violated by the Carrier when it used an employe not covered by the agreement to operate a Jordan Spreader in digging and back-filling a signal cable trench on two days, October 2 and 6, 1950, between East Allentown and WK Tower.

(b) That two days (of eight hours each) at the then current Signalmen's rate of pay be paid to the Signalmen who were adversely affected by this violation.

EMPLOYEES' STATEMENT OF FACTS: An agreement was negotiated on August 17, 1946 by the parties to this dispute which provides that the Central Railroad Company of New Jersey and the New York and Long Branch Railroad Signalmen's Agreement, effective August 16, 1938, as amended, is extended to include the Central Railroad Company of Pennsylvania as of August 5, 1946.

These cited agreements, are, by reference, made a part of the record in this dispute.

On two days, October 2 and 6, 1950, the Carrier used a Jordan Spreader, operated by an employe not covered by the Signalmen's Agreement, to dig and back-fill a signal cable trench between East Allentown and WK Tower.

The signal cable trench extended for a distance of approximately two miles. For about 35% of the distance, Signal Department forces were used to dig the trench, and the remaining portion of the work of digging and back-filling this signal cable trench was accomplished by the use of the Jordan Spreader operated by an employe not covered by the Signalmen's agreement. This claim involves and comprehends the work of operating the Jordan Spreader while digging and back-filling the signal cable trench.

It is the policy of this Board that where a Scope Rule is general rather than specific, to consider as coming under the scope only that work which historically and traditionally has exclusively been performed by that class of employe.

In the instant case, the operation of a Jordan Spreader, whether or not engaged in digging or back-filling a trench in which a signal cable is laid, has never been work which has been performed by employes under the scope of the Brotherhood of Railroad Signalmen's agreement.

To conclude that a Brotherhood of Railroad Signalmen employe must operate a Jordan Spreader where a signal cable is laid in the trench would lead to the further conclusion that if a drainage culvert or an electrical conduit is also laid in the trench, a Maintenance of Way employe, or an employe under the International Brotherhood of Electrical Workers, would also have to be engaged in the operation of the Spreader. Such a conclusion would, of course, be absurd.

The Maintenance of Way Agreement has been interpreted by this Board as to its scope to the extent that if the work being performed could conceivably affect the roadbed for which Maintenance of Way employes are primarily responsible, the Maintenance of Way employes should be used. See Awards 1134 and 5491. Particularly is this so when, as shown above, the work is performed by a machine riding upon the track, the operation of which requires a skilled operator to properly protect the track and roadbed.

This claim is further defective in that claimants have failed to show that there was a signalman available who was qualified to perform this work.

For the reasons stated above, this claim should be dismissed for failure to join affected employes. On its merits, the claim should be denied in its entirety as the work complained of does not, by agreement, belong exclusively to the class of employes here claiming.

OPINION OF BOARD: On October 2, 1950, between 12:15 P.M. and 2:45 P.M. a Jordan Spreader, operated by an employe within the scope of the Maintenance of Way Agreement was used to trench a ditch for signal cables at Allentown, Pennsylvania. The Signal Foreman, covered by the Signalmen's Agreement, was on the Spreader while the work was being performed. During the time the Spreader was trenching the ditch other members of the Construction Gang (Signalmen, Assistant Signalmen, Helpers) were hand digging a trench at a location where the Spreader could not be used. On October 6, 1950, Signalmen placed sand around the cable in the trench and the Spreader was then used to back fill the trench.

The Petitioner contends that the work of digging a trench for signal cables and then back filling the said trench is work that comes within the scope of its Agreement and claims that two eight hour days of pay at signalmen's rate of pay be paid to the Signalmen who were adversely affected by this violation.

It should be noted at the outset that no question was raised on the property with regard to unnamed Claimants and this issue is therefore not before the Board.

The Petitioner makes a special point of calling to the Board's attention the following language of the current Agreement:

“PREAMBLE

Signal work performed by employees of the Company shall be assigned to employees covered by this agreement.”

The Carrier's Ex Parte Submission explicitly admits that the Jordan Spreader was used to trench a ditch for signal cables; that the Signal Foreman and Assistant Signal Supervisor were on the Spreader while this work was being done; that the Signalmen, Assistant Signalmen and Helpers were hand digging a trench where the Spreader could not be used; that these men were in charge of a Leading Signalman; that a car of sand was placed on the train with the Spreader, and Signalmen placed the sand around the cable in the trench as the Jordan Spreader back filled the trench; that the men on the car were in charge of a Signal Foreman; that it took a second trip to do the trenching in proper fashion and while the second trip was being made the Signalmen were used to back fill the trench where the Spreader could not be used.

The Carrier also states that since the inception of the use of a Jordan Spreader, this machine has been operated by a Maintenance of Way employee and the General Chairman of the Maintenance of Way employees takes the position that the work properly belongs to employees covered by the Maintenance of Way Agreement.

It would seem that a reading of the Carrier's Ex Parte Submission (with its iteration and reiteration of personnel covered by the Signalmen's Agreement performing the bulk of the task in question, all being exclusively supervised by Signal Foremen and Assistant Signal Supervisors), creates the reasonable conclusion that the work in question was "Signal work". Reading the facts in the light of the Preamble to the Agreement, quoted supra, the said work must have been assigned to employees covered by the Signalmen's Agreement or the Carrier would have been in violation of the Agreement. Based on the facts in the instant case and the Agreement of the parties when the operation of the Spreader was performed by an employee other than a Signalman the Carrier did violate the Agreement. The Carrier states that no Signalman was qualified to operate the Spreader. Under these circumstances, the Carrier could have avoided a violation of its contract by writing an exception to the coverage but it did not do so.

This referee concurs in the precedent established by the line of cases which hold that where an agreement contains a broad scope provision and certain work is claimed by a particular Organization such Organization must prove its claim by evidence that the said work has traditionally, customarily and exclusively been performed by members of the Claimants' Organization. However, before it can be said that a particular precedent is controlling, both the facts and the agreement being cited must be apposite to the instant case. Such is not the case in the instant matter.

The Carrier offers as Exhibit "B" a statement signed by the Jordan Spreader Car operator wherein he cites "2 occasions where he performed this work before". Despite the fact that the said Exhibit was taken approximately three years after the instant dispute left the property and it is therefore inadmissible as evidence, the information it contains seems to be a belated effort on the Carrier's part to establish a "past practice". Two isolated instances occurring about three years after the case left the property hardly established a past practice. The record does not support the conclusion that the work of

digging trenches and backfilling in connection with laying signal cables was historically, customarily and traditionally performed by Maintenance of Way employes. On the contrary, on the facts of record in the instant case, the work in question properly belongs to the Signalmen.

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 the Carrier violated the Agreement.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of March 1964.