Award No. 12697

Docket No. SG-12187

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY — COAST LINES

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railway Company:

In behalf of Signalmen E. L. Manning and F. Sanders, Jr., for eight (8) hours each at their pro rata rate of pay for Tuesday, March 25, 1958, account work covered by the Scope of the Signalmen's Agreement was assigned to two electricians of the Santa Fe who are not covered by the Signalmen's Agreement. [Carrier's File: 132-118-7]

EMPLOYES' STATEMENT OF FACTS: About the year 1913 Signal Department employes constructed a 4400-volt power line with high voltage transformers for signal service between San Bernardino and Arcadia, California. That line was maintained and repaired exclusively by Signal Department employes until about 1950, when those employes installed electric meter service connections for the signal system between Arcadia and Glendora, and from Glendora to Etiwanda, and retired the 4400-volt line between these points. A 4400-volt line remains between San Bernardino, California, and Belen, New Mexico.

Beginning about March, 1953, working on Authority No. G. M. O. 8818, the Signal Department employes installed service connections for electric meters from Etiwanda to San Bernardino, completing the job about February, 1954, and retired the power line. Prior to, during, and after that time, Signal Department employes installed service connections for meters at dozens of locations in San Bernardino, Los Angeles, Riverside, Orange and San Diego Counties, California, which are all of the counties traversed by the lines of this Carrier's Los Angeles Division.

Until early in 1958, meter service connections installed in this area to feed signal circuits and apparatus were installed by signal employes.

During the early part of 1958, a signal gang was installing flasher sig-

submit such additional facts, evidence and argument as it may conclude are required in replying to the Organization's ex parte submission.

(Exhibits not reproduced.)

OPINION OF BOARD: Although this record is burdened with many unimportant quasi-collateral issues, it appears that the most significant question to be determined concerns an interpretation of the clauses in the Scope Rule which read, "automatic highway crossing protective devices, including all their appurtenances and appliances."

Some of the prior cases, in related areas, have held that this language is ambiguous and therefore the issues have been decided on the basis of past practice and custom. Other cases have held that such language was sufficiently certain as to either include or exclude the particular matter under consideration.

In the instant claim there is sufficient evidence to indicate that the employes theory of having the exclusive right to the work on the basis of custom or past practice is not applicable, since it is evident that both signalmen and electricians have performed the work in the past. However, such past practice is not controlling in view of the interpretation of the Scope Rule, that such devices unambiguously come within the terms, appurtenances and appliances. In our opinion, these words, when applied in this case, call for such a conclusion.

Prior cases have established the signalmen's authority or lack of same, in various areas of signal installations. This has resulted in a narrowing of the controversial areas. This case presents one of the last gaps in the installation process. It is admitted that the signalmens work extends to the switch box, but certainly no further than the crossarm connection. Therefore, the question concerns that work between the switch box and the crossarm.

The Carrier argues that the point of utilization is at the base of the switch box. The employes allege that it is where the power is delivered from the utility power line. We agree with the Organization.

In this decision we are impressed with the fact, that but for the signal system, there would be no need for the meter or switch box. Case 11973 is distinguished in this regard, in that the utility pole was also used for other than signal purposes.

Therefore, we hold that the language of the Scope Rule in this signalmens agreement, is sufficiently unambiguous to permit an interpretation of, "appurtenances and appliances," which would include the work performed in the instant claim.

We award signalmen E. L. Manning and F. Sanders, Jr. each eight (8) hours pay at their pro rata rate for Tuesday, March 25, 1958.

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 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 30th day of June, 1964.

DISSENT TO

AWARD 12697—DOCKET SG-12187

(Referee Hamilton)

The majority does not base its opinion on the point of utilization but arbitrarily holds that it is at the public utility poyer line, overlooking the ordinary or normal meaning of the word "utilization" and Second Division Award 2285 whch sustained a claim in behalf of the Electricians because Signalmen laid a service cable to a relay box for the purpose of furnishing power to flashing equipment at a highway crossing. The Board held:

> " * * * A determination of the point of delivery necessarily determines the issue. * * * the point of delivery under the rules as interpreted by the parties on this railroad is the relay box and not the safety switch installed on the station building. The work in question therefore belonged to the electrical workers and a sustaining award is required."

Under the facts of this case, it was virtually impossible for the power to be utilized prior to its delivery to the railroad. The point of delivery in Award 2285, supra, involving the same type facility and crafts, was held to be the relay box which is beyond the safety switch. The power obviously couldn't be utilized until actually put to some use. According to the General Chairman (R., p. 26) it was only used " * * * to charge batteries and feed signal circuits for the highway crossing signals."

If there was any uncertainty regarding the point of utilization, past practice conclusively indicates the Signalmen did not have an exclusive right to this work.

The attempt to distinguish Award 11973 by stating that " * * * the utility pole was also used for other than signal purposes" is emphatically wrong.

The organization recognized the fact that the pole in Award 11973, Docket SG 11416, was for the **sole** purpose of mounting the meter and weather switch. In making that claim, Local Chairman Reeves stated:

> " * * * this pole is to be used **solely** to mount the meter and weather switch on to supply AC power for the Flasher light signals that are being installed at this crossing by the Signal Department Employes". R., p. 5, Docket SG 11416. Award 11973, Kane.

General Chairman Waddington made an identical statement on record page 7, Docket SG-11416, Award 11973, Kane. This statement was not disputed.

Obviously, the majority's effort to distinguish Award 11973 on that basis is incorrect. The only distinguishable feature of Award 11973 is detrimental to the Signalmen's position here and contrary to the majority opinion in this case. There, the electricians performed the very same work which is in dispute herewithout protest from the signalmen.

The majority bases this opinion on the scope rule holding that the terms "appurtenances and appliances" are unambiguous enough to " * * * include the work performed in the instant case" and to warrant ignoring the interpretation placed on the terms by the parties, as reflected by past practice.

This is inconsistent with the interpretation placed on the term **"appurtenances, and all other work generally recognized as signal work"** in Award 11973. There the underscored portion of the previous sentence was clear and unambiguous to the Signalmen but meant exactly the opposite to the majority opinion in this case.

In the organization's rebuttal submission in Docket SG-11416, Award 11973, to which was affixed the signature of Mr. Jesse Clark, President of the Brotherhood of Railroad Signalmen, the following statement appears:

> "Commercial power from public utilities is brought to the top of the pole where it is attached to a bracket and run part way down the pole to the meter which is installed by either the public utilities or the Electrical Workers. A switch box is installed by the Electrical Workers directly below the meter and to this switch is attached the underground cable from the relay case which has been installed by signal employes. The signal employes connect the cable to the switch and the switch is the dividing line between the work of the two crafts. * * * " (R., p. 42. Docket SG-11416. Award 11973)

This statement conclusively shows the inconsistency with which the Signalmen interpret the same words and the only conceivable explanation is that they are ambiguous.

The terms "appurtenances" and "appliances" are likewise ambiguous insofar as they are alleged to contract an exclusive right to perform the disputed work to Signalmen. The terms have been so interpreted by the parties because it is not disputed that in the past both Signalmen and Electricians have performed this work without protest until the instant dispute. Such practice was recognized by the majority and should have been controlling.

The majority refused to take notice of the carrier's valid defense that the claimants were not properly licensed as required by the controlling ordinances. **Awards 5840**—Yeager, **2433**—Carter, **10977**—Moore, and **First Division Award 16558.**

For these and other reasons this award is palpably wrong, and we dissent.

W. M. Roberts

G. L. Naylor

R. E. Black

W. F. Euker

R. A. De Rossett

RESPONSE TO DISSENT TO AWARD NO. 12697

DOCKET SG-12187

The minority's (Carrier Members') dissent to Award No. 12697 demonstrates that their only concern is to obtain denial awards.

The minority members strongly argue "utilization", but aren't sure where they want the point of said "utiliation" to be established. This is manifest from their citation and discussion of **Second Division** Award No. 2285—which, by its own unambiguous findings, interprets only an agreement between a carrer (B & O) and its electrical workers, making no effort to interpret or consider a signalmen's agreement—and **Third Division** Award No. 11973 (B. of R. S. vs. I. C.). **Second Division** Award No. 2285 held such point under the electrician's agreement to be the "relay box"; citing **Third Division** Award No. 11973 the minority members contend it to be at the "safety switch." Now which one do you want? Obviously, they don't know and are only bewailing their untenable position.

The Carrier's admission that the "point of utilization" extends outward from the relay case proves the inapplicability of **Second Division** Award No. 2285. To show, then, that the electrical energy was utilized between the safety switch and the relay case and not utilized between the safety switch and the crossarm junction with the utility company's service leads became the Carrier's burden in order to establish its "point of utilization". This the Carrier could not do because it is obvious that, since no other facility was served by the service lead, all of the electrical energy here diverted from the utility lines was utilized by the crossing signal; hence, the point of utilization became that point recognized in Award No. 12697.

Award No. 12697 also correctly holds the finding of Award No. 11973 to be inapplicable, for it applies to and interprets an agreement between another carrier and its employes. No comment made by the minority members in regard to Award No. 11973 in any way detracts from the correctness of Award No. 12697.

The balance of the minority members' dissent is equally worthless. They are well aware of our many awards holding that practice can not abrogate an unambiguous agreement and they are equally aware that this Board is not a court of law.

The Referee, in writing the majority opinion in Award No. 12697 has shown a rare degree of perception and comprehension of the facts and circumstances of the case. There is no error in the sustaining award.

W. W. Altus, Labor Member