

Award No. 12943

Docket No. SG-12355

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island and Pacific Railroad Company:

In behalf of Signal Maintainer J. L. Snapp for eight (8) hours at the punitive overtime rate of pay on July 29, 1959, account the Carrier assigning and/or permitting Assistant Signal Supervisor F. W. Lavery and Signal Testman R. J. LaFoe to repair a train order signal on a Signal Maintainer's territory at Tonkawa, Oklahoma. [Carrier's File: L-130-176]

EMPLOYEES' STATEMENT OF FACTS: Mr. J. L. Snapp, a regular assigned vacation relief employee, at the time of the occurrence in this dispute, was assigned to relieve Signal Maintainer A. Johnson on the signal maintenance territory with headquarters at Enid, Oklahoma.

On July 29, 1959, Assistant Signal Supervisor F. W. Lavery and Signal Testman R. J. LaFoe left Enid, Oklahoma, and traveled to Tonkawa, Oklahoma, located on the Enid signal maintenance section, being relieved by Relief Signal Maintainer Snapp, where they repaired a train order signal which had been damaged.

Relief Signal Maintainer Snapp was not used to perform the repair work on the damaged train order signal, nor was he notified that the train order signal needed repairing. Consequently, he performed other routine maintenance work on July 29, 1959.

In view of the Carrier's improper action in assigning and/or permitting Assistant Signal Supervisor Lavery and Signal Testman LaFoe to repair a train order signal at Tonkawa, Oklahoma, which work properly accrued to Relief Signal Maintainer Snapp, a claim was filed by Local Chairman T. F. Johnson with Mr. E. L. Bartholomew, Signal Supervisor, under date of September 12, 1959. The letter of claim reads as follows:

Carrier's Ex Parte Submission

Reference is made to Mr. S. H. Schulty's letter dated November 3, 1960, advising that he had received notice from Mr. Jesse Clark, President, Brotherhood of Railroad Signalmen of America, stating his intention to file an Ex Parte Submission by December 2, 1960 covering an unadjusted dispute and claim which he described as follows:

"Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Rock Island & Pacific Railroad Company:

In behalf of Signal Maintainer J. L. Snapp for eight (8) hours at the punitive overtime rate of pay on July 29, 1959, account the Carrier assigning and/or permitting Assistant Signal Supervisor F. W. Lavery and Signal Testman R. J. LaFoe to repair a train order signal on a Signal Maintainer's territory at Tonkawa, Oklahoma."

CARRIER'S STATEMENT OF FACTS: On July 29, 1959, a train order signal at Tonkawa, Oklahoma was damaged in a truck accident. Signal Testman R. J. LaFoe repaired the damage.

An Agreement between the Carrier and the employes of the Carrier, represented by the Brotherhood of Railroad Signalmen of America, bearing an effective date of July 1, 1952, is on file with your Board and by this reference is made a part hereof.

POSITION OF CARRIER: Rule 1 of the applicable Signalmen's Agreement of July 1, 1952 reads:

"RULE 1. SIGNAL TESTMAN

An employe who is regularly assigned to and whose principal duties are the inspection and testing of signal appliances, apparatus, circuits, and appurtenances, but who may perform any Signal Department work, shall be classified as a Signal Testman." (Emphasis ours)

It is the Carrier's position that this rule is clear and unambiguous and, as per the language underlined, Signal Testmen may perform any signal Department work and in so doing there is no violation of any rule of the Agreement. Signal Testmen are, of course, covered by the Agreement and hold System Seniority as does the claimant.

The employes also contend that an Assistant Signal Supervisor performed work in connection with this case, but the employes have submitted no evidence to that effect. Actually, the supervisor was in attendance only in connection with his supervisory duties.

We submit on the basis of the facts in this case there was no violation of the Agreement and we respectfully request denial of the claim.

OPINION OF BOARD: Petitioner complains that Carrier used a Signal Testman and an Assistant Signal Supervisor to repair a signal on Claimant's territory. Claimant, a Signal Maintainer, was available to perform the work. The record contains no evidence that the supervisor did any of the work.

Petitioner bases its case on the Scope Rule and the Classification Rules of its Agreement with Carrier. Neither of these Rules give a signal main-

tainer exclusive right to this work. Award 12501 (Wolf). They are general in nature. This Division has frequently held that where such rules are general the intent of the parties can be learned by looking at the past practice and custom on the property. Awards 8001 (Bailey); 11028 (Hall); 10618 (Sheridan); 10715 (Harwood); 11128 (Boyd); 11526 (Dolnick) and others.

Past practice and custom on this property show that signal maintainers do not have exclusive rights to this work. Awards 12507, 12508 (Kane); 12554 (West); 12658 (Dolnick); 10766 (Russell). These Awards indicate that the basic question of this case has been settled on this property.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of October, 1964.