

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Daniel Kornblum, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY — EASTERN LINES**

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

(a) The Carrier violated the Scope Rule of the Signalmen's Agreement when it assigned B&B employes to paint 21 clearance markers in signal track circuits between Norman and Purcell, Oklahoma, on or about October 17, 18, and 19, 1960.

(b) Signal Maintainer J. B. Wallace, Jr., the regular assigned Signal Maintainer on the territory where the B&B employes painted the clearance markers in the signal track circuits, be compensated for six and one-half (6½) hours at his pro rata rate of pay account of the violations cited in (a) of this claim [Carrier's File No. 132-94-1]

EMPLOYES' STATEMENT OF FACTS: This dispute arose as a result of the Carrier unilaterally removing the painting of clearance markers in signal territory from the Scope of the Signalmen's Agreement and assigning this work to employes other than Signalmen. The Carrier's unilateral action took place early in 1960. Signal forces on this Carrier, for as many years as our records are intact, have painted clearance markers in signal territory and have been held responsible for their correct location. In fact, this Carrier has reprimanded signal employes for failing to locate these markers correctly in signal territory in the past.

Clearance markers in non-signaled territory merely mark the point in a siding where a car will clear mainline movements, whereas, clearance markers in signaled territory mark the end of a signal track circuit, which the Signal Section of the Association of American Railroads recognizes as the foundation of any signal system. In both instances, clearance markers consist of markings painted on rails and ties.

Clearance markers in non-signaled territory may be correctly located by simply measuring distances between the center of the main line and center of a point in a siding. However, clearance markers in signaled territory mark the end of a signal track circuit and thus are an integral part of a signal track circuit. To correctly locate a clearance marker in signal territory, an employe must be familiar with signal track circuits.

in the instant dispute is wholly without support under the agreement rules and should be either dismissed or denied for the reasons previously set forth herein.

(Exhibits not reproduced).

OPINION OF BOARD: The issue in dispute is whether or not the work of painting clearance markers in bonded (i.e., signal) territory belongs exclusively to Signal employees under the Scope clause of their Agreement.

In October, 1960, the Carrier used Maintenance of Way bridge and building (B&B) painters to repaint all clearance markers between Norman and Purcell, Oklahoma Division, one of 18 Divisions in its entire system. Among the markers so repainted were 21 located in bonded territory; the remainder were all situated in unbonded (i.e., non-signal) territory. The Organization makes no claim to the work in the unbonded territory. Its exclusivity contention extends only to the painting of the clearance markers in bonded territory.

In summary, the Organization's argument is premised on two basic grounds: (1) clearance markers in bonded territory are "appurtenances and appliances" of the signal system within the meaning of the Scope Rule; (2) under that rule the work of painting such markers has been "generally recognized as signal work". The Carrier denies and disputes both these contentions.

A clearance marker simply consists of bright orange paint applied at given points on rail sidings to the outer end of the tie and the outside base, web and ball of the rail immediately above the tie. The proof shows that the situs of these markers are now located in accordance with a standardized plan adopted by the Carrier. This plan indicates that there are three types of such markers: "No. 57—Clearance Marker in unbonded territory" (designating the point beyond which locomotives of cars may not be moved or left on side tracks without fouling locomotives in cars on the main track); "No. 58—Clearance Marker in bonded territory" (designating the point beyond which locomotives or cars on siding may not be moved without encroaching on the circuit fouling point which actuates main track signals); "No. 59—Clearance Marker with derail in bonded or unbonded territory" (designating the point beyond which locomotives or cars may not be moved on side rails without being derailed).

It must also be noted that, in given circumstances, besides these markers Clearance Posts are also used on both bonded and unbonded tracks. Thus, the standard plan provides that "No. 60—Clearance Post" may be used "in addition" to any of the three types of markers "when approved by General Manager". Significantly, there is no dispute in the record that the installation and maintenance, including painting and repainting, of Clearance Posts has always been done by Maintenance of Way employees. Yet the fact is that when installed alongside clearance markers in bonded territory clearance posts serve, in whole or in part, the same purpose as the markers.

The Carrier points out that neither clearance markers nor clearance posts are physically connected with the electrical signal circuit system. Also, they are in no sense tangible mechanical adjuncts or accessories to that system. The clearance markers are just painted identification lines. Indeed, according to the standard plan even in bonded territory they are actually located on the outside rail about one-half rail length short of the second insulated point (on the inside rail) which actuates the main track signals. In other words, the No. 58 markers, the only ones here in dispute, are actually located in un-

bonded territory in back of the beginning of the effective signal circuit fouling point.

Carrier also points out, without denial, that all other types of roadway signs, including those which designate the beginning and ending of ATS and TCS signal installations, are erected, maintained and painted by M/W employees. Since these types of signs are not regarded as "appurtenances and appliances" within the meaning of the Scope clause of the Signalmens' Agreement, it is difficult to understand why the clearance markers at issue should be so regarded. It appears to be a distinction without a meaningful difference. The Organization's argument that the repainting of these clearance markers involves an appurtenance and appliance of the track signal circuit thus finds no sufficient support in the record (See Awards 7789, 8001, 8071, 8316, 11595, among many others).

The proof is also deficient to support the argument, certainly at least as to this Division of the Carrier's system, that the work of painting clearance markers in bonded territory has been "generally recognized as signal work". On the contrary, the record shows that this work has been done mostly, if not exclusively, by B&B painters in the M/W craft and class. There is proof by the Organization that back in June, 1928, a signalman attached to this Division was formally reprimanded for "failure to mark out old clearance and mark new clearance". The Carrier points out that this letter, antedating the present dispute by some 30 odd years and a copy of which it no longer has in its files, does not by itself prove that even at that early date the work of painting clearance markers in signal territory was done **exclusively** by Signalmen. In any event, it maintains that this reprimand is academic and irrelevant to this dispute because (1) the issue here involves the mere repainting and not the relocation of markers, and (2) the location of markers is now done according to standard plan promulgated by the Carrier. More importantly, the Carrier insists that according to its available records employees subject to the Signalmens' Agreement "have never been used to paint clearance markers on Carrier's Eastern Lines on which the claim in the instant dispute arose". Beyond the 1928 letter referred to above, the Organization shows nothing in the record to overcome this countervailing representation of the Carrier. In any event, there is nothing in the record to show that the work at issue was ever performed **exclusively** by employees covered by the Signalmens' Agreement. The precedents of this Board are legion that, given a Scope Rule as here, the burden of proving exclusivity is on the Claimant (e. g. 8755, 9001, 9565, 10014, 10515, 11784, 12774, 12905 among many others).

The Carrier does admit that prior to November, 1959 on its Los Angeles Division the work of painting clearance markers in bonded territory was performed by signalmen. This work was then assigned by the Carrier to M/W employees. This change in work assignment on the Los Angeles Division is said to be the subject of a separate claim and appeal now pending before this Board. We, of course, express no opinion whatsoever intended to reflect on the disposition of that appeal; our discussion and findings here are confined alone to the instant claim and no other.

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 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 17th day of February 1965.