

Award Number 13347

Docket No. SG-13315

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ross Hutchins, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company that:

(a) The Southern Pacific Company violated the current Signalmen's Agreement effective April 1, 1947 (reprinted April 1, 1958 including revisions), particularly the Scope Rule and Rule 70 when on February 21, 1961, it assigned or otherwise diverted work generally recognized as signal work to a person not covered by the current Signalmen's Agreement by using said person to operate a truck in which signal equipment was being hauled from local storage point to point of installation.

(b) Mr. J. A. Buie be allowed two (2) hours at his overtime rate of pay 7:30 P. M. to 9:30 P. M. for February 21, 1961, when person not covered by the Signalmen's Agreement was used to operate the truck in which signal equipment was being hauled between Carrizozo and Santa Rosa, New Mexico. (Carrier's File: SIG 152-92; S-97-21-102)

EMPLOYEES' STATEMENT OF FACTS: On February 21, 1961, at about 3:30 P. M., an improper train movement at Tucumcari, New Mexico, damaged a spring switch machine to the extent that replacement was necessary. As replacement spring switch machines are stored at the Signal Shop in El Paso, Texas, it was necessary to secure a replacement machine from this point.

On receiving word of the damaged switch machine, the Signal Supervisor at El Paso immediately dispatched a replacement machine eastward toward Tucumcari by truck and assigned the Assistant Signal Supervisor at El Paso, who is not covered by the Signalmen's Agreement, to operate the truck. The Signal Supervisor simultaneously instructed the Assistant Signal Supervisor in Carrizozo, New Mexico to proceed westward by truck from Carrizozo to effect a meeting with the truck from El Paso, transfer the switch machine from the El Paso truck to the Carrizozo truck, and transport it to Tucumcari. The Carrizozo Assistant Signal Supervisor was accompanied westward by Signalman J. A. Buie, who was also headquartered at Carrizozo.

current agreement could have any possible claim was performed by such employees.

It is noted that the "Statement of Claim" as asserted by Petitioner is misleading and, whether from ignorance of the facts or otherwise, implies a circumstance which is far from true. Attention is directed to that portion of paragraph (a) of the Statement of Claim reading:

" . . . which signal equipment was being transported from a local storage point to point of installation . . . "

The transporting of a piece of signal equipment, as was done in this case, from El Paso, Texas, to Tucumcari, New Mexico, a distance of 330 miles, could hardly, by the most generous interpretation, be considered a "local" operation as the term "local" is commonly understood and used. That Petitioner is not unaware of that fact is evidenced by the fact that while the within claim in favor of Claimant Buie is for that portion of the trip from Carrizozo to Santa Rosa, New Mexico, a companion claim for that portion of the trip between El Paso, Texas, and Valmont, New Mexico, has also been appealed to this Division by Petitioner in this case (File NRAB-1185-Sou Pac.) in favor of Signalman J. F. Lindsay, headquarters El Paso.

Were Petitioner's position in this case to prevail, conceivably it would not be possible for Carrier to move a piece of signal equipment by truck between any points on its lines, unless that truck was driven by an employee covered by the current agreement, without incurring a penalty on every district through which the truck had to pass.

With reference to Rule 70, cited in support of this claim, for that rule to become operative, it must first be shown that there has been a violation or misapplication of any portion of the current agreement. This has not been, nor can it be, done.

Insofar as the claim for overtime rate is concerned, if there were any basis for claim submitted, which Carrier denies, nevertheless the contractual right to perform work is not the equivalent of work performed. That principle is well established by a long line of awards of this Division, some of the latest being 6019, 6562, 6750, 6854, 6875, 6974, 6978, 6998, 7030, 7094, 7100, 7105, 7110, 7138, 7222, 7239, 7242, 7288, 7293, 7316, 8114, 8115, 8531, 8533, 8534, 8568, 8766, 8771, 8776, 9748, and 9749.

CONCLUSION

The claim in this docket is entirely lacking in merit or agreement support and Carrier requests that it be denied.

OPINION OF BOARD: A spring switch machine was damaged at Tucumcari, New Mexico, and replacement was necessary. As replacement spring switch machines were stored at the Signal Shop in El Paso, Texas, it was necessary to secure a replacement machine from El Paso. El Paso dispatched a replacement machine toward Tucumcari by truck. The Assistant Signal Supervisor, who was not covered by the Signalmen's Agreement operated the El Paso truck. Simultaneously a truck left Carrizozo headed toward El Paso. The Carrizozo truck was operated by Assistant Signal Supervisor, not covered by the Agreement, and Signalman Buie was also in the Carrizozo truck. The trucks met at Valmont, New Mexico, where the machine was transferred from

the El Paso truck to the Carrizozo truck and returned to Carrizozo where Signalman Buie was released and the Assistant Signal Supervisor proceeded to Santa Rosa where the Santa Rosa Signal Maintainer joined him to proceed to Tucumcari to assist in the installation of the switch machine.

In SG-13326 Signalman Lindsay seeks compensation at the time and one-half rate for the amount of time the El Paso Assistant Signal Supervisor consumed in transporting the machine from El Paso to Valmont and in transferring the machine from one truck to another, in Valmont.

In SG-13315 Signalman Buie seeks compensation at the time and one-half rate for the amount of time the Carrizozo Assistant Signal Supervisor consumed in transporting the switch machine from Carrizozo to Santa Rosa.

The Organization contends the Scope Rule has been violated. The Rule is as follows:

"Scope: This agreement shall apply to work or service performed by the employees specified herein in the Signal Department, and governs the rates of pay, hours of service and working conditions of all employees covered by Article 1, engaged in the construction, reconstruction, installation, maintenance, testing, inspecting and repair of wayside signals, pole line signal circuits and their appurtenances, interlocking, spring switch locking devices, highway crossing protection devices and their appurtenances, wayside train stop and train control equipment, detector devices connected with signal system, car retarder systems, centralized traffic control systems, signal shop work and all other work that is generally recognized as signal work.

"It is understood the following classifications shall include the employees performing the work enumerated under the heading of 'Scope'".

This Rule does not specifically enumerate transportation of signal equipment. If the particular work in question is not specifically set out in the Agreement then the work belongs to the signalmen if by practice, custom and usage on the property work has been done system-wide exclusively by signalmen. Award 11526 (Dolnick)

In Award 10051 (Dugan) the Board said:

"Claimant is an assistant signalman on a signal gang apparently working between Lithonia and Conyers, Georgia on January 31, 1956. Normally a roadway department crane moved signal foundations and battery tubs. It broke down on January 31, 1956 and could not be fixed until the next day. To keep the job going the Signal Supervisor had a track maintenance crew of five men assist in hauling battery tubs from one location to another. This took approximately thirty-five minutes. On the same afternoon in a place called Social Circle, not mentioned in the claim, the signal gang was unloading some signal material from freight cars to the Freight House. It was raining and section gang laborers were on the platform out of the rain. At the direction of the Section Foreman the five laborers in the gang assisted in unloading the signal equipment. They worked thirty minutes. The claim was denied.

"The claim asks for punitive pay for claimant for five hours and

twenty-five minutes for work performed by track maintenance forces 'between Lithonia, Ga., and Conyers, Ga.'

* * * * *

"Here the particular question stated in the claim upon which an award is desired is for punitive pay for allegedly letting laborers do signalmen's work.

* * * * *

"With respect to whether the disputed work is exclusively signal work the Carrier maintains that inasmuch as the Organization has not pointed to anything specifically in the scope rule which classifies the work as signal work its conclusions are mere assertions and thus the Organization has failed to sustain its burden of proof.

"In determining to what class or craft work belongs the determining factor is the reason for the performance of the work. Award 3638. In Award 5046, the Board said:

'But work in connection with the movement of such materials from a warehouse or material yard to a signal construction or maintenance job for immediate use on such job is the exclusive work of signalmen.'

"Here in one instance relocation of signal equipment was involved, in the other case the signal equipment was being delivered along the Carrier's line for use in the Signal System. Instead, the Carrier admitted the work in question was signalmen's work. Under such circumstances, the work involved was the exclusive work of the Signalmen." (Emphasis Supplied)

In understanding this case three things must be considered. First, the part we have underlined, Secondly, Award 3638 and Thirdly, Award 5046.

First, in Award 10051 the Carrier admitted that the work in question was signal work. The Carriers letter states as follows:

"This will acknowledge your letter April 20th, relative to claim for B. D. Davis, Assistant Signalman, for time worked by track forces in performing signal work on January 31, 1956."

Therefore, whether or not the work in question was signal work was not an issue in Award 10051.

Secondly, Award 3638 did not determine that work involved in that case was the exclusive work of the signalmen. The Award says:

"The cutting of trees and the cutting and trimming of underbrush is not the exclusive work of any class or craft of workmen."

Award 3638 was issued in response to a claim for a difference in rate of pay. The entire paragraph from which the sentence above is quoted is as follows:

"The cutting of trees and the cutting and trimming of under-

brush is not the exclusive work of any class or craft of workmen. The method of determining to which class such work belongs is by an examination of the reason for the performance of the work. Here the work was performed at the behest of, under the direction of, and for the benefit of the telegraph department. Such being the case, the work is that of lineman helpers and should be compensated for at the rate of pay of lineman helpers under the composite rule."

Obviously, "the reason for the performance of the work" did not establish that the work was exclusively the Claimants.

Now we turn to Award 5046:

"On February 17, 1947, T. & S. Inspector A. J. Beauchamp used an Electric Traction truck to transport telegraph and signal material from Baldwin Tower to Lampkin Street, Marcus Hook and Bellevue. The motor truck was operated by an electrician from the Electric Traction Department. The electrician was accompanied by his helper. Neither the electrician or his helper was directed to assist in the handling of the material. The evidence shows, however, that they voluntarily helped Beauchamp to load the material at Baldwin Towers but that they performed no work in the unloading of it. The claim is made by two furloughed signalmen who contend the work performed by the electrician and the electrician's helper was signalmen's work which they should have been called to perform.

"The material being moved was being distributed between Signal Maintainers' stations. It was not being hauled insofar as the record shows in connection with its actual use in signal construction or maintenance work. Under the previous awards of this Division, the work in question was not the exclusive work of signalmen. Until it becomes an integral part of a signal construction or maintenance job, the signalmen have no exclusive right to its handling. Consequently, work in connection with the moving of materials to be used by signalmen at some future time is not exclusively signalmen's work. But work in connection with the movement of such materials from a warehouse or material yard to a signal construction or maintenance job for immediate use on such job, is the exclusive work of signalmen. Awards 3826, 3689, 4797, 4978."

Two sentences have been made bold face. The first sentence that is bold face finds that the work in question was not the exclusive work of the signalmen, and is the determination upon which this Board found the Agreement had not been violated and denied the claim. The last sentence which is bold face is dicta, but is the basis upon which the docket now before us was prepared by the organization. Award 5046, and more particularly the last part which is bold face is the authority upon which the Organization relies.

The proposition urged by the Claimant is, therefore, as follows: The movement of material from a warehouse or material yard to a signal construction job, is the exclusive work of signalmen. However, as stated, 5046 does not use or apply this rule but cites 3826, 3689, 4797 and 4978 to support the dicta of 5046.

Award 3826 involves the unloading of signal equipment by signalmen. But the claim is by a trucker who claimed the work belonged to the truckers.

The Board in that case found that the loading at the place in question belonged to the truckers. Award 3826 does not announce the rule of the previous paragraph nor is Award 3826 support the rule in the previous paragraph. The case found the work belonged to the truckers by the Carriers own admission.

In Award 3689 the Board said:

"The claim presents a request that signalmen be used as drivers for trucks assigned to the T. & S. Forces.

"The Carrier maintains a Trucking Pool at Philadelphia which consists of 55 trucks. Forty-two chauffeurs covered by the Clerks' Agreement are assigned thereto. These trucks are used by the Carrier to do its business in and around Philadelphia.

"Two of these trucks, with chauffeurs, are regularly assigned to perform service having to do with the T&S Department. One of these trucks is specially equipped for such service having a power winch, tripods for raising poles and tool compartments. The other trucks has no special equipment except removable seats which are used when hauling personnel.

"Both of these trucks are regularly used to haul men, material, equipment and supplies to, from and on the job of T&S work. Except when the character of the work requires it, these trucks do not ordinarily remain with the T&S Department employes during the day's work and, if necessity requires, the Foreman-Truck may assign them to perform any kind of trucking for the Carrier. However, when T&S Department work is to be performed, such as pulling cable or raising poles, the truck especially equipped for such work and its chauffeur remains with the gang, the chauffeur operating the power winch and tripods as necessary.

"As to the driver of the truck which has no special equipment, except that of removable seats, we find his duties to be that of a chauffeur and under the situation here is not within the Scope of the Signalmen's Agreement. As to the driver of the other truck, which carries the special equipment, we find his principal duties to be that of a chauffeur and under the situation here is not within the Scope of the Signalmen's Assignment.

"It may be that the driver of the truck, which has special equipment, is performing work within the Scope of the Signalmen's Agreement when operating this equipment in doing T&S Department work but that does not entitle the Brotherhood to have its employes assigned to the position, the principal duties of which are not within the scope of its agreement. There are proper methods available by which that matter can be disposed of.

"We find the Brotherhood's request seeks to have its employes assigned to positions the duties of which are not within the scope of its agreement and should therefor be denied."

This case clearly fails to establish the dicta of 5046 urged by the Claimant. In Award 4797 the Board was considering a rating case and nowhere

announces support of the proposition appearing as dicta in 5046.

In Award 4978 the question involved was whether or not the clerks had the exclusive right to operate trucks for certain hauling. This case does not support the Claimant but this case does support the Carrier's proposition that the question to be answered is whether or not the Brotherhood had the exclusive right to this work.

No awards have been found that support the proposition that the movement of material from a warehouse or material yard to a signal construction job, is the exclusive work of signalmen though such work might be the signalmen's in a given case. The awards do not support the rule, that the purpose for which the trucking will be done, as determinative of whether or not the work belongs to the signalmen, though such may be probative.

The question is: Under the Scope Rule before us as hauling is not included specifically in the Agreement does the hauling in question belong exclusively to the signalman, system-wide by practice, custom and usage on the property?

The answer to this question in this docket is that we do not know from the evidence presented. The burden is on the Claimant, and for that reason the claim must be dismissed.

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 a violation of the Agreement has not been shown.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1965.