

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Central of Georgia Railway Company:

(a) That the Carrier violated the current Signalmen's Agreement of July 1, 1950, when on Tuesday, January 31, 1961, two employes from the Communications Department (Messrs. Moss and Dacus) were instructed or permitted to work one and one-half (1½) hours each putting up a traffic signal pole at Tenth Avenue, Columbus, Georgia.

(b) That Signal Maintainer R. L. Teece, Phenix City, Alabama, be paid for three (3) hours at his overtime rate of pay account of this violation. (Carrier's File No.: SIG 464)

EMPLOYEES' STATEMENT OF FACTS: The parties to this dispute, according to the record, are in agreement that the Carrier's signal maintenance forces required a wooden pole to replace an existing pole used to support a street blinker light at an intersection in the Columbus, Georgia Yard. The parties also agree that Carrier's Signal Supervisor arranged to have the pole transported to the site, where used, by two Communications Department employes who are not covered by the Signalmen's Agreement.

The Carrier maintains that one Signal Maintainer and one Traveling Signal Maintainer were waiting at the installation site to install the pole. The Carrier also maintains that it instructed Signal Maintainer Andrews to operate the truck's rigging which is designed to set poles but, if he desired, he would be at liberty to request one of the communication's men to manipulate the equipment on the truck to raise the pole. The Carrier said it instructed Andrews that if such request was made, he should stand by the communications worker and at least hold his hand on his shoulder while the pole was being raised. The Carrier does not elaborate what Andrews should at most have done if the communications employes operated the truck to raise the pole.

The record shows that General Chairman Estes maintained all work in connection with transporting and installing the pole should have been done by signal forces and that the Carrier should pay a penalty for violating the Agreement. The record also shows that the Carrier replied to General Chair-

"It is therefore the Opinion of the Board that no conclusive evidence has been produced to show any violation of the Agreement as alleged. We again reiterate as we have said many times before, the burden of proof is upon the party making the claim, and where competent proof is lacking a sustaining award is improper. * * *

"AWARD

"Claim denied."

Third Division Award 6379 (Kelliher)

"The Petitioner has failed to sustain its burden of proof to show a contract violation.

"AWARD

"Claim denied."

Third Division Award 6378 (Kelliher):

"Based upon an analysis of all the evidence, it must be found that the petitioners have failed to sustain the burden of proof and, therefore, claim is accordingly denied.

"AWARD

"Claim denied."

Third Division Award 5418 (Parker):

" * * * * * Under our decisions (see e.g., Award No. 4011) the burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance and, where that burden is not met, a denial Award is required for failure of proof.

"AWARD

"Claim denied."

And there are many other Awards of the Board on this point, to numerous to mention.

In view of all the facts and circumstances shown by the Carrier in this Ex Parte Submission, Carrier respectfully requests the Board to deny this baseless claim in its entirety.

OPINION OF BOARD: Signal Maintainer J. J. Andrews and Traveling Signal Maintainer P. F. Garlington were instructed by Supervisor of Communications and Signals L. J. Butler to replace one of the poles supporting a street blinker light at the intersection of Tenth Avenue and Carrier's tracks in Columbus, Georgia. The alleged violation occurred on Tuesday, January 31, 1961. These Signal Maintainers were told they could have the use of a truck assigned to the Communications Section to raise and set the new pole. The creosote pole was delivered to the work site by two employees from the Communications Department.

It is the Employees position that the Carrier violated the Scope Rule of the current Signalmen's Agreement when, on January 31, 1961, it required two employees not covered by the Signalmen's Agreement to transport signal material to the work site and then required or permitted these employees to help install and replace the signal material in question; that the Claimant in the instant dispute, holds seniority on the entire Carrier's system and is entitled to be paid for three (3) hours at his overtime rate of pay account of this alleged violation.

Carrier contends that it has not farmed out any work covered by the Scope Rule of the Signalmen's Agreement; that the two Signal Maintainers were instructed and so performed the work in question, in its entirety on January 31, 1961; that the transporting of material to the work site is not work exclusively belonging to Signalmen; that the Claimant, R. L. Teece, was on duty and under pay performing work on his assigned territory at the date and hour the work here was performed, therefore, since Columbus, Georgia is not within the assigned territory of Mr. Teece, the Claimant, he has not been deprived of anything and is an improper Claimant.

The Scope Rule of the Signalmen's Agreement reads:

"SCOPE

"This agreement covers the rates of pay, hours of service and working conditions of all employees, classified herein, engaged in the construction, installation, repairing, inspecting, testing and maintenance of all interlocking systems and devices; signals and signal systems; wayside devices and equipment for train stop and train control; car retarder and car retarder systems; centralized traffic control systems operative gate mechanism; operative highway crossing protective devices; spring switch mechanism; electric switch targets together with wires and cables; iron train order signals; signal cantilevers, power or other lines, with poles, fixtures, conduit systems, transformers, arrestors and wires or cables pertaining to interlocking and signal systems; interlocking and signal lighting; storage battery plants with charging outfits and switch board equipment; sub stations, current generating and compressed air plants, exclusively used by the Signal Department, pipe lines and connections used for Signal Department purposes; carpenter, concrete and form work in connection with signal and interlocking systems (except that required in buildings, towers and signal bridges); together with all appurtenances pertaining to the above named systems and devices, as well as any other work generally recognized as signal work."

Award 10051 and particularly Award 5046 are cited as authority by the Petitioner to sustain their contention; that movement of such materials to a job site for immediate use on such job, is the exclusive work of Signalmen.

Award 5046 reads in part:

"... 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."

The same question of exclusivity of work for Signalmen in delivery or transporting signal material, as well as the same cited authority of Awards

5046 and 10051, were interpreted by this Board in Docket No. SG-13315, Award 13347.

"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 . . ."

We find that the transporting of signal material to the job site, as described herein, is not work exclusively belonging to Signalmen. The Scope Rule of the Signal Agreement does not specifically mention the transporting of signal materials to job sites, as that work reserved to the Signalmen. It is apparent from the record, materials have been picked up and delivered to job sites by other Crafts or Classes. Transporting or delivery is not "any other work generally recognized as signal work," or has the Organization shown that Signalmen have performed such work to the exclusion of others.

The Union also alleges, that on the date in question, involved the use of a company truck, equipped with a hoist and boom, regularly assigned to the Communications Section, was operated by two employes not covered by the Signalmen's Agreement, in helping the two assigned Signalmen, to raise and set the pole.

Signal Maintainer Andrews and Traveling Maintainer Garlington received the following instructions from their Supervisor: to perform all of the work in question at the job site; that Andrews, placed in charge, could use own discretion in operating the hoist and boom on the truck to complete the assignment; if he lacked confidence in operating said mechanism, he could request an employe of the Communication Section to operate the rigging; that if he so requested its operation he was to "stand by" and direct the raising of the pole into the hole.

The hole was dug by both Signalmen and Mr. Andrews, per instruction, used discretion by directing the Communication employe to raise and set the pole. Mr. Andrews stood by while Traveling Signal Maintainer Garlington guided the pole into the hole and Andrews subsequently helped fill in around the pole.

Carrier stated on the property that Mr. Andrews had received prior instructions on the operation of such a rig from the Supervisor of Communications and Signals. Both parties assertions are in conflict as to Mr. Andrews qualifications and experience to operate the rig in question on the job site. Such burden is on the Petitioner.

In Award 11451, the Carrier used a trench-digging machine to dig trenches for signal cables and pipelines. An employe not covered by the Signalmen's Agreement actually operated the machine but a Signaller was placed on it and paid for the time spent on the job. He was also instructed to direct the operation of the machine. The Board said:

"It is conceded that the work belonged to Signalmen under the Agreement, but it is not denied that no Signaller at the time was qualified to operate the trench-digging machine."

"Under these set of facts, the claim is without merit and will be denied."

In Award 12187 the contention in that dispute arose out of use of a crane

for hole digging and use of personnel other than Signalmen for picking up scrap. The Board said:

" . . . Consistent and uniform with past decisions of this Board, the Carrier is free to assign to others work not specifically listed in the Scope Rule."

and

" . . . evidence disclosed Signalmen standing by and not qualified to operate the crane. This practice did not violate the Scope Rule."

We find, therefore, the Carrier in the instant case had the prerogative to direct the Signalmen in the performance of the work in question and did not violate the Scope Rule. There is no prohibition in the Signalmen's Agreement as to Communications employees performing such work.

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 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 30th day of June 1965.

DISSENT TO AWARD NO. 13708

DOCKET SG-13539

Award No. 13708 does violence to the sound doctrine when it overrules Awards Nos. 5046 and 10051, and when it quotes out of context from Award No. 13347. So noting, it is not necessary to enumerate the Majority's other errors. Award No. 13708 is in error; therefore, I dissent.

/s/ W. W. Altus
W. W. Altus
for Labor Members

7/26/65