# Award No. 13716
# Docket No. SG-13665

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

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**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, Rules 5 and 70.

(b) Mr. A. E. Rowe be paid one (1) hour or the same amount of time as is charged by the Store Department at his straight-time rate of pay for each working day from June 3, 1961, until the practice of allowing employes not covered by the Signalmen's Agreement handling signal equipment and material in and around the Sacramento Signal Shop is stopped and the work turned over to signal department employes. [Carrier's File: SIG 152-105]

EMPLOYES' STATEMENT OF FACTS: This dispute arose as a result of the Carrier's action of requiring and/or permitting employes (Store Department employes) not covered by the Signalmen's Agreement to operate a fork lift to handle signal equipment and material in and around a newly-established consolidated signal shop at Sacramento, California.

The Carrier previously had signal shops at Sacramento, San Jose and West Oakland, as well as at various other locations along its lines. Under the terms of a Memorandum of Agreement effective November 30, 1960, the signal shops at West Oakland and San Jose were to be abolished upon the establishment of new shop facilities at Sacramento. The consolidated shop at Sacramento was to be used to perform work for the entire system, though the shops at Brooklyn, Los Angeles and El Paso were to be retained. When that Memorandum of Agreement was signed, it was understood that the work performed by the employes of the three shops would continue to be performed by them in the consolidated shop.

The work involved in this dispute began on or about June 3, 1961, and the new shop facilities at Sacramento were established on or about June 16, 1961.

The new signal shop at Sacramento was located in the same yards with the Store Department, and the Carrier assigned Store Department employes to

It is obvious that by no manner of interpretation can that rule be held to reserve to Signal Department employes work in connnection with the operation of lift trucks in circumstances obtaining in this Docket.

For many years, Stores Department trucks and/or lift trucks, manned by Stores Department employes, were used at West Oakland and San Jose Signal Shops and at the former location of the Sacramento Signal Shop, to handle signal material and equipment to and from the signal shops at those locations.

This claim is obviously an attempt on the part of Petitioner to secure for Signal Department employes through an Award of this Division an exclusive right to perform the service in question in this dispute. Evidence thereof is the fact that Carrier and Petitioner entered into a new agreement identified as Memorandum of Agreement, effective November 30, 1960 (Carrier's Exhibit "E"). It is noticed that nothing therein refers to manning fork lift trucks in Signal Shops. If it were Petitioner's desire to alter this practice outlined hereinbefore, it should have done so at the time of writing the above-referred-to Memorandum of Agreement; however, there is no evidence that any such question arose at the time of writing.

In this respect, the Board's attention is directed to the following excerpt from this Division's Award 8538:

> "When a collective bargaining agreement is consummated and existing practices are not abrogated or changed by its terms, those existing practices are just as valid and enforceable as if authorized by the agreement itself, (Awards 1257, 1568, 3461, 4105); and particularly when, as here, an existing practice is sought to be changed. Claimants here have not conclusively established their right to perform the work in question to the exclusion of others similarly employed, either through custom and practice on this property or under the terms of the contract. Thus, in effect, this Board is being asked to grant something the agreement does not provide. The rule that we are without authority so to do is too well established to require further comment."

**CONCLUSION**

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

(Exhibits not reproduced).

**OPINION OF BOARD:** The violation of the Agreement alleged in the Claim is:

> ". . . **the practice** of allowing employes not covered by the Signalmen's Agreement handling signal equipment and material **in and around** the Sacramento Signal Shop . . ." **(Emphasis ours.)**

Petitioner adduced no factual evidence to prove the specifics of the alleged "practice" and thus to give meaning to the phrase "in and around".

The particular work to which Petitioner claims an exclusive right being undefined, the Board cannot adjudge whether the "practice" violates the Agreement. We will, therefore, dismiss the Claim.

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 Claim must be dismissed for lack of evidence.

AWARD

Claim dismissed.

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.