

Award No. 14121
Docket No. SG-14259

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Harr, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al. that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when it required and/or permitted a person not covered by the Signalmen's Agreement (Mr. Padgett, Operator of Sinclair Service Station) to use his truck for two (2) hours and thirty (30) minutes on March 16, 1962, to transport and install the crossing signal foundation at Highway No. 301 at Orangeburg, S. C.

(b) The Carrier further violated the Scope when it required and/or permitted seven (7) employees of the Department of Public Utilities, Orangeburg, S. C., to use a truck and other equipment to handle and install or erect the cantilever crossing signal at highway No. 301 crossing in Orangeburg, S. C., on March 20, 1962.

(c) The Carrier should now be required to compensate B. H. Bradshaw, J. L. Holsenback, Jr., and P. G. Lotshaw, at their respective rates of pay for all time worked by these outside persons on the installation of the highway crossing signal at Orangeburg on March 16 and 20, 1962, or eight (8) hours each at the overtime rate, to compensate them for the time worked by persons not covered by the agreement and who held no seniority or other rights with the Carrier. [Carrier's File: SG-17785.]

EMPLOYEES' STATEMENT OF FACTS: As shown in our Statement of Claim, this dispute is based on the Carrier's action of permitting employees of two other companies to perform signal work in connection with the installation of highway crossing signals on this Carrier's property. These outside employees hold no seniority or other rights under the Signalmen's Agreement.

This claim is similar to claims now before the Board, which are awaiting disposition and are identified as SG-12933 and SG-13078. It is similar, also, to a claim which was disposed of by Award No. 9749. The similarity of this

CONCLUSION

Carrier has shown conclusively that:

(a) The effective Signalmen's Agreement was **not** violated as alleged by the Brotherhood and does not support the claim and demand here made. Furthermore, 100% of the work was for account of and at the cost and expense of the State of South Carolina.

(b) Exclusive rights are not granted by the effective Signalmen's Agreement. That agreement has to be interpreted in the light of the established and recognized practice throughout the years. The evidence of record shows conclusively that the employees have recognized throughout the years that they do **not** have monopolistic rights to all work in connection with installation of highway crossing protective devices. They have recognized Carrier's unrestricted right to have work performed by machines in situations such as here involved at its discretion throughout the years. That exclusive rights are not granted signalmen by the agreement is also recognized in the language of the scope rule.

(c) The principles of prior Board awards fully support Carrier's action.

(d) The named claimants were on duty and under pay when the involved machines were used. In fact, they worked with the machines. Prior awards of the Board have denied claims without even considering the merits of same in situations where, as here, the claimants were on duty and under pay when the complained of functions were performed.

(e) Use of machines in handling and lifting did **not** constitute performance of "generally recognized signal work on * * * automatic or manual electrically operated highway crossing protective devices and their appurtenances" within the meaning of those words as used in the scope rule of the signalmen's agreement in evidence.

In these circumstances, the Board has no alternative but to make a denial award because claim is not supported by the agreement and established and recognized practices thereunder.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimants were assigned to install a cantilever bracket crossing signal at highway No. 301 crossing in Orangeburg, S. C., on March 20, 1962. This dispute arose when the Carrier allowed certain work on this installation to be done by workers not employed by Carrier. The Organization asks that each Claimant be paid at the overtime rate for all time worked by these outside employees.

The portions of the Agreement involved here are:

"RULE 1. SCOPE

(Revised, effective January 16, 1948.)

This agreement covers the rules, rates of pay, hours of service and working conditions of employees hereinafter enumerated in Article II — Classification.

Signal work shall include the construction, installation, maintenance and repair of signals, either in signal shops, signal storerooms or in the field; signal work on generally recognized signal systems, wayside train stop and wayside train control equipment; generally recognized signal work on interlocking plants, automatic or manual electrically operated highway crossing protective devices and their appurtenances, car retarder systems, buffer type spring switch operating mechanisms, as well as all other work generally recognized as signal work.

It having been the past practice, this Scope Rule shall not prohibit the contracting of larger installations in connection with new work nor the contracting of smaller installations if required under provisions of State or Federal law or regulations, and in the event of such contract this Scope Rule 1 is not applicable. It is not the intent by this provision to permit the contracting of small jobs of construction done by the carrier for its own account."

"RULE 2. CLASSIFICATION

* * * * *

(f) Signal Helper: (Revised, effective January 16, 1948.) An employe assigned to perform work generally recognized as helper's work assisting other employes specified herein shall be classified as a signal helper. A signal helper, when working alone, or two (2) or more helpers working together, may perform such work as cleaning and oiling interlocking plants, drilling rail with hand drill, mixing concrete, excavating, digging holes and trenches, handling material, and performing all other work generally recognized as signal helper's work, but shall not be permitted to do work recognized as that of other classes covered by this agreement."

The Carrier employed a Mr. Padgett to use his wrecker truck to transport parts of a pre-cast concrete signal foundation from the freight house and install them in a hole which the Claimants had dug at the crossing at highway 301 crossing in Orangeburg, S. C. The Organization alleges that this man was used with his truck, for two and one-half hours.

The Carrier allowed seven employes of the Department of Public Utilities of Orangeburg to handle, haul, install and erect the cantilever signal on the concrete foundation. The Organization alleges that these seven men were used for a period of three hours.

The Carrier contends that this work was not granted exclusively to the Organization by the Agreement. They also allege that they do not have the equipment necessary to perform this work.

This case involves the same parties, rules and principles involved in Third Division Awards 9749 (McMahon), 11733 (Stark) and 13236 (Dorsey).

Carrier goes to great detail in an attempt to refute Award 9749. On page 57 (R-80) of it's submission Carrier states:

"The award is not only erroneous, as it is unsupported by the Signalmen's Agreement, but is ridiculous as well."

In the Carrier Members' Dissent To Award No. 13236 they state:

"Award 13236 is palpably wrong."

Although we do not necessarily agree with the damages awarded in these cases we feel that the reasoning by which the Board concluded the Agreement was violated is sound. We cannot agree that they are "ridiculous" or "palpably wrong."

It would be chaotic if this Board were to ignore previous Awards involving the same parties, rules and facts.

We find Carrier has violated the Agreement.

While we find that the Agreement has been violated we do not feel the Organization has proved that the Claimants should be compensated at the overtime rate. The Claimants should be compensated on a pro rata basis for eight hours each at their respective rates of pay.

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 Carrier violated the Agreement.

AWARD

Claim sustained as set out in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of January 1966.

CARRIER MEMBERS' DISSENT TO AWARD 14121,

DOCKET SG 14259 (Referee Don Harr)

In addition to Carrier Members' Dissent to Award 13236, which by reference is made a part of this dissent, we submit the following:

As evidenced in the record the top part of the highway crossing signal foundation, weighing 735 pounds, and the base, weighing 1,005 pounds, were too heavy to be lifted manually by claimants or transported by the company truck assigned to Crossing Signal Maintainer Bradshaw from the depot in Orangeburg to the crossing of Carrier's main track by U.S. Route 301 in Orangeburg. A crane mounted on a truck owned and operated by Jack Padgett lifted the foundation top and base onto the truck and the truck transported

them from the depot to the hole dug by claimants at the crossing of Carrier's track by U. S. Route 301. The crane on the truck then lifted them from the truck and lowered them into the foundation hole as directed by claimants.

Carrier not having available at or near Orangeburg a crane or truck to lift and transport from the depot to the crossing of Carrier's track by U. S. Highway 301 the cantilever type flashing light crossing signal, weighing 2,540 pounds, arranged with the Department of Public Utilities to furnish a truck equipped with a hoist to lift the signal onto the truck, transport it by truck to the foundation and lift it from the truck onto the foundation. While a gang of seven men employed by the Department of Public Utilities accompanied the truck, only the truck driver drove the truck and only the foreman operated the hoist. The other five men did not participate.

Thus Mr. Padgett did not "install" the precast signal foundation, nor did employes of Orangeburg Public Utilities Department "handle, haul, install and erect" the signal on the concrete foundation. The crane and hoist lifted and the trucks transported the two heavy pieces of the concrete foundation and the highway crossing signal.

The sole issue presented to the Board was this: Did lifting by the crane and hoist and transporting by the two trucks constitute "generally recognized signal work on * * * electrically operated highway crossing protective devices and their appurtenances" within the meaning of these words as used in the scope rule of the controlling agreement? The answer is obvious. It did not.

What is "generally recognized signal work on * * * electrically operated highway crossing protective devices and their appurtenances"? It is work requiring special skill and training to perform which has throughout the years been performed "on * * * electrically operated highway crossing protective devices and their appurtenances" on this Carrier's property by signalmen or signal maintainers. This does not include lifting by a crane or hoist or transporting by truck heavy concrete foundations or highway crossing signals.

Neither Mr. Padgett, who operated his crane and drove his truck, nor employes of the Department of Public Works of Orangeburg, who operated the hoist and drove the city's truck, performed "generally recognized signal work on * * * electrically operated highway crossing protective devices and their appurtenances."

The majority also disregarded the fact that claimants were on duty and under pay at Orangeburg when the lifting and transporting was done and were not adversely affected in any manner whatsoever, and that numerous prior awards of the Board have denied claims of this type, the most recent awards of the Third Division being 10963 and 13958.

Instead of dealing with the issue presented and the facts of record, the Majority was obviously swayed by Awards 9749, 11733 and 13236.

Award 14121 does not interpret the controlling agreement and is erroneous. We therefore dissent.

R. A. DeRossett
W. F. Euker
C. H. Manoogian
G. L. Naylor
W. M. Roberts