

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bernard E. Perelson, Referee

PARTIES TO DISPUTE

BROTHERHOOD OF RAILROAD SIGNALMEN

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railroad Company that:

Claim No. 1—

(a) The Carrier violated and continues to violate the Signalmen's Agreement and past practice when other than signal department employees were assigned to install and maintain a train order transmitter at Washington Court House, Ohio, on or about April 3, 1964.

(b) Signal Foreman A. F. Brixner, and Signal Maintainers G. Clayton and R. Comer be allowed eight hours each at their respective rates of pay account other than signal department employees being assigned to perform this generally recognized signal work.

Claim No. 2—

(a) The Carrier violated and continues to violate the Signalmen's Agreement and past practice when other than signal department employees were assigned to install and maintain a train order transmitter at Cottage Grove, Indiana, on or about April 13, 1964.

(b) Leading Signal Maintainer Max L. Kalp, Signal Maintainer D. L. Clark, and Assistant Signal Maintainer S. L. Risch be allowed four hours each at their respective rates of pay due to other than signal department employees being assigned to perform this generally recognized signal work.

EMPLOYEES' STATEMENT OF FACTS: This is a combination of two claims that were handled separately on the property. Both involve the same general issue as a previously submitted claim (SG-14443)—other than signal employees performing work on a train order transmitter.

OPINION OF BOARD:

AS TO CLAIM NO. 1

The Memorandum of Conference signed by the parties, reads in part as follows:

"Memorandum of Conference

* * * * *

EMPLOYEES' STATEMENT OF FACTS:

On or about April 3, 1964, a train order transmitter was installed and is being maintained by other than Signal Department employees at Washington Court House, Ohio.

Eight hours' time was consumed by each of three B&B Department employees in traveling to and from Dayton, Ohio, and installing the train order transmitter.

Previous installations and maintenance of train order transmitters on this and other seniority districts have been performed by Signal Department employees at 'J' Tower, Willard, Galatea, Bates, Lima, Piqua, New River Jct., Hamilton and Washington Court House, Ohio, Cottage Grove and West Dana, Ind., and Tuscola, Ill., commencing in 1948 and thereafter.

POSITION OF THE EMPLOYEES:

It is the position of the employees that by viture [sic] of the past practice, the installation and maintenance of the train order transmitter at Washington Court House, Ohio, should have been assigned to Signal Department employees as generally recognized signal work.

MANAGEMENT STATEMENT OF FACTS:

On April 3, 1964, a Train Order Transmitter was installed at Washington Court House, Ohio, by three B&B employees. These employees were at this location doing other work and while here each worked one hour erecting transmitter. Prior to this date one B&B employee spent 4 hours at Dayton, Ohio, making concrete foundation for transmitter. This was the first transmitter ever installed at this location.

POSITION OF MANAGEMENT:

It is the position of Management that the making of the concrete foundation, its installation and the installation of the metal Train Order Transmitter is work that belongs to B&B Department Employees.

This type of work is not covered in the Scope portion of the Agreement and therefore the claim is declined."

* * * * *

AS TO CLAIM NO. 2

The Memorandum of Conference signed by the parties, reads in part as follows:

"EMPLOYEES' STATEMENT OF FACTS:

On or about April 13, 1964, a train order transmitter was installed and is being maintained by other than Signal Department employees at Cottage Grove, Indiana.

Four hours was consumed by each of three B&B Department employees in installing this train order transmitter.

Previous installations and maintenance of train order transmitters on this and other seniority districts have been performed by Signal Department employees at 'J' Tower, Willard, Galatea, Bates, Lima, Piqua, New River Jct., Hamilton and Washington Court House, Ohio, Cottage Grove and West Dana, Ind., and Tuscola, Ill., commencing in 1948 and thereafter.

POSITION OF THE EMPLOYEES:

It is the position of the employees, that by virtue of the past practice, the installation and maintenance of the train order transmitter at Cottage Grove, Ind., should have been assigned to Signal Department employees as generally recognized signal work.

MANAGEMENT STATEMENT OF FACTS:

On April 3, 1964, a Train Order Transmitter was installed at Washington Court House, Ohio, by three B&B employees. These employees were at this location doing other work and while here each worked one hour erecting transmitter. Prior to this date one B&B employee spent 4 hours at Dayton, Ohio, making concrete foundation for transmitter. This was the first transmitter ever installed at this location.

POSITION OF MANAGEMENT:

It is the position of Management that the making of the concrete foundation, its installation and the installation of the metal Train Order Transmitter is work that belongs to B&B Department Employees.

This type of work is not covered in the Scope portion of the Agreement and therefore the claim is declined."

* * * * *

The Scope Rule, as to both claims, reads as follows:

"SCOPE

This Agreement governs the rate of pay, hours of service and working conditions of all employees classified in Article I of

this Agreement, either in the shop or in the field, engaged in the work of construction, installation, inspecting, testing, maintenance, repair and painting of:

(a) Signals including electric locks, relays and all other apparatus considered as a part of the signal system, excluding signal bridges and cantilevers.

(b) Interlocking systems, excluding the tower structure.

(c) Highway crossing protection controlled or actuated by track or signal circuits.

(d) 1. Signal Department conduits, wires and cables, overhead or underground.

Note: See Mediation Agreement of May 5, 1942, and agreed interpretation thereto appearing on pages 52 and 53 with respect to reconstruction and/or renewal of poles used jointly by Railroad and Western Union.

2. Power lines installed primarily for signal purposes. Where power is supplied from signal power lines for other purposes Signalmen's work will include line taps, transformers and service line up to and including a fused switch adjacent to said power line. Where power is supplied from other sources for Signal Department purposes, Signalmen's work will exclude work from such source to and including a fused switch or approved receptacle at designated point of delivery. Signalmen's work will include all work from such point of delivery to and including signal facilities.

(e) Wayside equipment necessary for cab signal, train stop and train control systems.

(f)

(g) Centralized traffic control systems.

(h) Spring switches where point locked or signal protected, excluding work normally performed by track forces.

(i) Bonding of all track except in electrical propulsion territory.

(j) All other work generally recognized as signal work.

No employes other than those classified herein will be required or permitted, except in an emergency, to perform any of the signal work described herein except that signal supervisory and signal engineering forces will continue in their supervisory capacity to make such tests and inspections of all signal apparatus and circuits as may be necessary to insure that the work is installed correctly and properly maintained. The term 'emergency' as used herein is understood to mean the period of time between the discovery of a condition requiring prompt action and the time an employe covered by this Agreement can be made available."

The Scope Rule does not contain any express reference to the work in dispute in this case.

A train order transmitter consists of a metal pole which is located in an upright position near the track and is used for the purpose of delivering written train orders or other written messages to employes on moving trains. The written train order is tied in a string that is in the form of a loop and placed in a detachable train order hoop. The hoop has an extended shaft, that is placed in a bracket on the train order transmitter. Train orders are placed in the hoops by means of strings tied in such fashion that trainmen can reach out and secure them easily. Its purpose is to permit train crews to secure train orders from cabooses while moving or proceeding through the area past the transmitter.

There is no dispute as to the material facts in this case. The issue is whether the installation of the train order transmitters by employes other than those covered by the Brotherhood's Agreement violates that agreement.

The Brotherhood maintains that train order transmitters are a part of the signal system and that by the specific and explicit terms of the agreement the work of installing them are reserved exclusively to them. While the Scope Rule is specific in covering the installation, maintenance and repair of signals and all other apparatus considered as part of the signal system, it makes no mention of train order transmitters. It does not define signals nor does it define apparatus that can be considered as a part of the signal system. It does not include or exclude train order transmitters.

In view of the fact that the Scope Rule is silent and does not make mention of train order transmitters, the words "All other work generally recognized as signal work" may be construed either to include or exclude train order transmitters. The language of the rule being ambiguous, we may look to past practices or customs in an endeavor to ascertain the intent of the parties to the Agreement.

The Brotherhood in support of its contention states that train order transmitters have previously been installed and maintained by Signal Department at several places commencing with 1948. (See page 15 of Record)

The Carrier in support of its contention states that the transmitter is not an electrical apparatus nor a signal appurtenance; is no part of the signal system and that the prevailing practice on its system with reference to installation and maintenance of train order transmitters has been for Maintenance of Way B&B employes to do this work. (See page 19 of Record)

The Brotherhood has not presented nor introduced into this record that degree of evidence sufficient to establish a consistent practice adequate to support its reading of the Scope Rule. The weight of the evidence submitted impels the conclusion that on the system of the Carrier it has been the past practice for the disputed work to be done by employes not covered by the Brotherhood's Agreement.

Since the subject Agreement does not expressly confer jurisdiction over the disputed work exclusively to signal employes, and in view of the practice as here found, it follows that the Brotherhood does not have exclusive jurisdiction over the said work. A denial of the claims are therefore warranted.

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 Carrier did not violate the Agreement.

A W A R D

Claims No. 1 and No. 2 are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April, 1966.