

Award No. 14446
Docket No. SG-13208

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold Zack, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Coast Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railway Company that:

(a) The Carrier violated the Signalmen's Agreement when it assigned B&B employes to paint clearance markers in signal track circuits between San Diego and Fullerton, California, and on the Redlands District.

(b) Signal Maintainers H. L. Scarlet, R. L. Paris, J. Savage, C. J. Elliott, and J. R. Dockery be compensated for 16 hours each at their respective pro rata rates of pay. [Carrier's File: 132-94-2.]

EMPLOYEES' STATEMENT OF FACTS: This dispute arose as a result of the Carrier unilaterally removing the painting of clearance markers in signal, (bonded), territory from the Scope of the Signalmen's Agreement and requiring employes other than those covered by that Agreement to perform this work. The Carrier's unilateral action took place early in 1960. Signal forces on this Carrier, for as many years as our records exist, have painted clearance markers in signal territory and have been held responsible for their correct location. In fact, this Carrier has reprimanded signal employes for failing to properly locate these markers in the past.

Clearance markers in nonsignaled or unbonded territory merely mark the point in a siding where a car will clear mainline train movements, whereas, clearance markers in signal territory mark the end of a signal track circuit, which the Signal Section of the Association of American Railroads recognizes as the foundation of any signal system. In both instances, clearance markers consist of markings painted on rails and ties.

Clearance markers in unsignaled territory may be correctly located by merely measuring distances between the center of the mainline and center of a point in a siding. However, clearance markers in signaled territory mark the end of a signal track circuit and must be located by an employe familiar with signal track circuits. Signal forces are the only employes on this Carrier familiar with signal track circuits.

Fourth: Clearance markers are, moreover, similar in nature to clearance posts which have always been installed and painted by employes subject to the Maintenance of Way Agreement, in which connection it is appropriate to point out that maintenance of way employes install the ties and rails on which clearance markers are painted.

Fifth: Your appeal claim involves a jurisdictional question or dispute which also concerns employes who are subject to the Maintenance of Way Agreement and are represented by the Brotherhood of Maintenance of Way Employes.

As to your claim for penalties, I wish to first direct attention to the fact that B&B Painters did not paint any clearance markers on the territories of Signal Maintainers Scarlet and Dockery during the period embraced by your appeal claim, and it is therefore my position that there is no basis whatever for the 16 hours' penalty compensation claimed in behalf of each of those individuals.

Since it does not require in excess of 5 minutes to paint a clearance marker, it is my further position that your claim for 16 hours' compensation in behalf of each Signal Maintainers Elliott and Savage is excessive for the reason that a total of only 14 clearance markers were painted on Maintainer Savage's territory, while 72 were painted on Elliott's territory during the months of July and August 1960, and some of those were painted prior to August 20, 1960, which is the earliest date on which your appeal claim could possibly commence.

Since he was absent during the months of July and August during which only 15 clearance markers were painted on his territory, your claim for penalties in behalf of Mr. Paris is not only also excessive but was presented in behalf of an employe who was not available to perform the work claimed in his behalf.

Yours truly,

/s/ L. D. Comer."

(Exhibits not reproduced.)

OPINION OF BOARD: During July and August 1960 a B&B paint gang, represented by the Brotherhood of Maintenance of Way Employes was engaged in repainting all roadway signs in the territory between Fallbrook Junction and San Diego on the Fourth District of the Carrier's Los Angeles Division. A Claim was filed by the Brotherhood of Railroad Signalmen alleging that certain of the markers painted were clearance markers in signal track circuit territory and thus within the province of Signalmen and should have been painted by them.

This case is similar on the merits to that decided by Referee Kornblum in Award Number 13304, and there is no need to reiterate the argument of parties advanced therein. In that award, Referee Kornblum found that painting of clearance markers in bonded territory had not been proven to be exclusively performed by employes covered by the Signalmen's Agreement, and accordingly denied the claim.

Referee Kornblum did reserve judgment on similar work arising in the Los Angeles Division which is currently before us. The Los Angeles case is different in that the Organization contends that the painting of clearance markers was done exclusively by Signalmen, while the Carrier asserts that this was not the case. Even if the work were exclusive to the Signalmen on bonded territory in the Los Angeles Division, it is the well established reasoning of this Board that exclusivity can not be sustained on the basis of local variances in practice but must be shown to be system wide. In the instant case the evidence is that any such exclusive practice is limited to the Los Angeles Division, and is contrary to the practice throughout the rest of the system.

As reasoned by Referee Dolnick in Award 11526:

"The Agreement between the parties is system-wide. It is not confined solely to . . . any one of the Carrier's Divisions. It includes them all. While it is true that the Employees do not have access to all of Carrier's records, and that it is sometimes difficult to know all that is happening in the system, it is nevertheless, the obligation of the Employees to make certain that the work belonging to Signalmen is specifically set out in the Agreement. If it is not so set out, then the work belongs to them only if by practice, custom and usage on the property, work has been done system-wide exclusively by Signalmen."

Here the evidence is that it was not done system-wide exclusively by Signalmen and the claim must therefore be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 20th day of May 1966.

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