



Award No. 16103  
Docket No. SG-16189

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

*Daniel House, Referee*

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**BELT RAILWAY COMPANY OF CHICAGO**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood of Railroad Signalmen on the Belt Railway Company of Chicago that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope Rule, when, on October 12, 1964, an employe—other than a Signal Employe—operating a crane was assigned to remove the beams from "B" retarder on the Clearing Hump. At the time "B" retarder was in the process of being rebuilt by Signal Employes.

(b) Carrier be required to pay Signal Maintainer D. Flaska eight (8) hours' pay at the time and one-half rate.

(Carrier's File: 760-S-398.)

**EMPLOYES' STATEMENT OF FACTS:** This claim resulted when, on October 12, 1964, Carrier assigned to an employe not covered by the Signalmen's Agreement the work of operating a Shield-Bantam crane to remove the beams from a car retarder in the System at the Clearing Hump. The retarder was in the process of being rebuilt by Signal Department employes who had been properly assigned to the project in accordance with the Scope of their Agreement.

The General Chairman initiated a claim on behalf of Signal Maintainer D. Flaska for eight (8) hours' pay at the time and one-half rate as a result of the Scope Rule violation. It was subsequently handled in the usual and proper manner by the Brotherhood on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement. Correspondence which constitutes and is pertinent to the handling of the claim and subsequent appeals is attached hereto as Brotherhood's Exhibit Nos. 1 through 7.

There is an agreement in effect between the parties to this dispute, bearing an effective date of September 1, 1949, as amended, which is by reference made a part of the dispute.

(Exhibits not reproduced.)

**CARRIER'S STATEMENT OF FACTS:** The Carrier operates a Car Retarder Hump Classification Yard at Clearing on a twenty-four hour per day basis. An average of about 4,500 to 5,000 cars pass through the retarders every day. The car retarder in "B" section of the system was in the process of being rebuilt. It was necessary to lift beams out of the car retarder to repair and replace them. Due to the excessive weight of the beams it was necessary under existing conditions and in the interest of safety to use a crane to assist Signal Department employees in the removal of the beams from "B" section retarder. The only equipment available to perform this work was a Shield-Bantam crane normally assigned to the Carrier's Stores Department operated by a Stores Department employee qualified to do so. That crane operated by the Stores Department employee was used to assist Signal Department employees in lifting the beams out of the retarder on Monday, October 12, 1964.

The claimant, Mr. Flaska, has not worked on car retarder replacements and was not qualified to operate the crane that was used and there were no other Signal Department men qualified to operate the crane. Mr. Flaska worked his regular third trick assignment on the claim date. The removal of the beams was performed on the second trick.

**OPINION OF BOARD:** During the second trick on October 12, 1964, at the Clearing Hump, Carrier had an employee not covered by the here involved Agreement operate a crane in assisting Signal Department employees in rebuilding a retarder. Carrier conceded that the involved work ordinarily belongs to the Organization under the Scope Rule, but claims an exception here on the basis that there was no available employee covered by the Agreement who was qualified to operate the crane and on the basis of an alleged practice of using employees not covered by the Agreement to assist in cases like this. Carrier also argues that the Claimant named was from another shift, had never before done the involved work and had in the past refused overtime, and is therefore in any case not entitled to be paid as claimed in part (b) of the Claim.

The issues joined by the parties may be clearly seen from a recital of portions of the correspondence they exchanged on the property. The General Chairman filed the claim in a letter dated November 11, 1964, saying that it was:

"... due to a violation of the Signalmen's Agreement the scope rule in particular, when on October 12, 1964, a maintenance of way employee operating a crane was assigned to remove the beams from B retarder on the Clearing Hump. . . . The removal of beams from the car retarders is and always has been signal work. . . ."  
(Emphasis ours.)

to which Carrier's Signal and Electrical Supervisor replied:

"The . . . claim is denied for the following reasons:

- (1) The crane was not operated by a Maintenance of Way Employee but by a Store House employee.
- (2) It has been a practice to use other department equipment in the past to lift beams out of car retarders when car retarders are to be replaced or repaired. (Example: D. Boness was injured when swing loader was used to remove beams out of a car retarder in 'C' Yard.)

- (3) All available men that wished to work on the rebuilding of 'B' retarders were used." (Emphasis ours.)

In appealing this to the Engineer Maintenance of Way, the General Chairman said in his letter dated March 3, 1965:

"... By using an **employee** other than a Signal employee to remove the beams of said retarder the Carrier was in violation of the scope rule. Had the Signal Supervisor felt the need of additional help there is a provision made for this in the Signalmen's Agreement, namely Rule 67, but this rule was ignored. Also at the time the violation occurred I informed the Signal Supervisor that he was violating the Agreement and he made no effort to correct it.

In the Signal Supervisors denial of this claim he admits that an **employee other than a Signal employee was used. . . .**" (Emphasis ours.)

to which Carrier's Engineer Maintenance of Way replied on April 30, 1965:

"... Secondly, we have in the past, used other **men** from other departments on various pieces of equipment as we needed additional help. These other men have been used to lift the beams out of the retarders and to replace them.

In the past, we have never contacted you when we had brought in other **pieces of equipment** to expedite the job. . . ." (Emphasis ours.)

The General Chairman repeated in his final appeal to Carrier's Manager-Labor Relations the language quoted above from his letter of March 3rd, and the Manager-Labor Relations replied:

"... The work was performed over a sixteen hour period on the first and second tricks. Mr. Flaska, who has not worked on retarder replacements, held a regular third trick assignment. He is not qualified to operate the crane used in this instance and I am informed that there are no other Signal Department employees who were qualified to operate this crane. While it may not be material in determining the validity of this claim made for Mr. Flaska, it is a fact that he personally refused to work overtime in the past, so that the claim for this individual is strictly on a technical basis.

All available Signal Department employees were used on this work and, as stated before, none were qualified to operate the crane and none could be used to operate it while Flaska was engaged in other work."

Rule 67 reads:

"(a) Where circumstances require the use of additional employees to expedite the work or furnish required additional help, it is permissible by agreement with the General Chairman to use other available company employees at Signal Department rates of pay and under Signal Department supervision.

(b) Memorandum of Agreement — Effective November 9, 1961.

This will supersede my letter of October 23, 1961, concerning the changes proposed by you on October 13, 1961, re: bulletins No. 61-5 and 61-6:

We agreed to change the assigned territory to read: from: System  
— to: System, excluding Hump.

It was understood and agreed that when unusual situations arise that require the use of men assigned to system maintenance to assist on the Hump, they may be so used without penalty by agreement between the Company's and the Employee's representatives."

What appears to be Carrier's defense against the claim that Carrier ignored Rule 67 is in the quoted portion of the Engineer's April 30th letter; there Carrier says that both employees not covered by the Agreement and pieces of equipment from other departments had in the past been used on the retarder replacement jobs and that Carrier never contacted the Organization when it brought in equipment. In the face of the clear mandate of Rule 67 that when circumstances require that additional help be used, other than Signal employees may be used by Carrier by agreement with the Organization, we find this statement of defense (if it is actually intended as a defense under Rule 67) both equivocal and inadequate. The record contains but one example offered by Carrier that employees other than Signal employees had been used in the past, and no examples of such use of non-Signal employees in such cases without agreement with the Organization. Even if Carrier's arguments that the circumstances here permitted an exception to the Scope Rule were otherwise valid, Rule 67 sets forth prerequisites for Carrier's use of such an exception in cases such as this. Since Carrier did not follow the clearly stated mandate of Rule 67, we need not examine the other arguments about the claimed exception to the Scope Rule.

We find no merit to Carrier's argument that Claimant was not entitled to be named as the Claimant in the remedy section of the Claim.

**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 Carrier violated the Agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 21st day of February 1968.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.