



Award No. 17960

Docket No. SG-18272

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

PENN CENTRAL COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former Pennsylvania Railroad Company that:

- (a) Carrier violated the Scope of the Agreement when it used a gang of 10 trackmen to dig holes for telephone poles between M. P. 48 and M. P. 104.6 from December 12, 1966 to December 23, 1966, inclusive, excluding Saturdays and Sundays, thereby depriving C. & S. employees of Seniority District #16 of work rightfully belonging to them.
- (b) M. A. Irons, Foreman C. & S., F. E. Walter, R. E. Whiting, A. R. Tripp, Signalmen C. & S., D. P. Adams, J. C. Foley and M. T. Johnson, Helpers C. & S., Seniority District #16, be paid a comparable number of hours (114 each) at their respective rates of pay for all time made by the ten men of the track department for the dates shown and the violations cited in claim (a) above. (Carrier's File: System Docket No. 591—Northern Division Case No. NN-37)

EMPLOYEES' STATEMENT OF FACTS: This claim is the result of Carrier's diversion of Communication & Signal (C.&S.) work to persons who are neither classified under nor entitled to perform work covered by the Agreement.

On November 28, 1966, in a heavy snow storm, approximately 180 telegraph poles were broken on the Buffalo Main Line between Mile Posts 21 and 141. This is a part of the territory which comprises C.&S. Seniority District No. 16.

Excluding Saturday and Sunday, during the period December 12 to 23, 1966, inclusive, ten (10) trackmen under the direction of an Assistant Foreman C.&S. dug about 160 pole holes at various locations between Mile Posts 48 and 104.6 where poles had been broken. The remaining pole holes, about 20 of them, were dug by C.&S. employees.

After November 28 and before December 12, during the 2-week period following the storm before which trackmen were used to dig the pole holes, communications and signal circuits were restored. This was accomplished by a method customarily used in such instances whereby broken line wires are repaired and/or replaced temporarily with twist wires. This type wire comes from the manufacturer twisted in pairs and is designed so that it can either be laid out on the ground or suspended in air.

CARRIER'S STATEMENT OF FACTS: This dispute arose on the Buffalo Main Line of the Carrier's Northern Division (former Pennsylvania Railroad Company) of the Carrier's Central Region.

Claimants, members of Seniority District No. 16, C. & S. Department, were regularly assigned on the territory of the Buffalo Main Line as follows:

M. A. Irons, Foreman, C. & S.; F. E. Walker, Signalman, C. & S.; R. E. Whiting, Signalman, C. & S.; A. R. Tripp, Signalman, C. & S.; D. P. Adams, Helper, C. & S.; J. C. Foley, Helper, C. & S.; M. T. Johnson, Helper, C. & S.

On November 28, 1966, as a result of a severe snow storm accompanied by extreme icing conditions, approximately 180 telephone poles were broken on the territory, Mile Post 21 to Mile Post 141, of the Buffalo Main Line.

Temporary repairs, restoring communications, were made by C. & S. Department employes, including Claimants, by means of "twist wires" around the breaks in the lines; however, it was not until December 12, 1966, that the programming of men and material permitted the starting of the work to permanently restore the broken pole lines.

During the period December 12-23, 1966, an M. of W. Track Gang, working under the direction of an Assistant Foreman, C. & S., dug approximately 160 holes for telephone poles between Mile Post 48 and Mile Post 104.6. The remaining 20 holes were dug by C. & S. Department employes who also redug some of the 160 holes. On the dates and during the hours when Trackmen dug the holes, the Claimants were on duty, engaged in other work such as setting poles and restoring the lines.

By letter dated February 11, 1967, the Local Chairman submitted the claim to the Supervisor, C. & S., who received it on February 13, 1967. The Supervisor, C. & S. denied the claim with his letter dated March 10, 1967, following which, the Local Chairman rejected his decision and listed the claim for discussion with the Superintendent of Personnel by letter of March 13, 1967. The Superintendent of Personnel denied the claim by letter dated April 13, 1967; following which, the Local Chairman, by letter of May 8, 1967, rejected the Superintendent's decision and requested preparation of a Joint submission, a copy of which is attached as Exhibit "A".

In a letter dated May 12, 1967, the General Chairman presented the claim to the Manager, Labor Relations (now Director, Labor Relations), the highest officer of the Carrier designated to handle such disputes on the property. The claim was discussed at a meeting held on March 19, 1968, and by letter dated May 2, 1968 (copy attached as Exhibit "B"), the Director, Labor Relations denied the claim.

The General Chairman rejected the Director's decision with his letter of November 22, 1968, copy attached as Exhibit "C". The Director reaffirmed his decision by letter dated January 23, 1969, copy attached as Exhibit "D".

Therefore, so far as the Carrier is able to anticipate the basis of this claim, the questions to be decided by your Honorable Board are whether the work of digging holes for telephone poles accrues exclusively to Signal Department employes; whether such work was emergency work, and whether the Claimants are entitled to the compensation claimed.

OPINION OF BOARD: On November 28, 1966, a severe snow storm damaged approximately 180 telephone poles on the Buffalo Main Line of the Carrier. Temporary repairs were made by the C. & S. Department employes,

including Claimants, thus restoring communications. On December 12, 1966, work was started to permanently restore the broken lines. From December 12 to December 23, 1966, a Maintenance of Way Track Gang, working under the direction of an Assistant Foreman, C. & S., dug approximately 160 holes for the telephone poles, the remaining 20 holes having been dug by C. & S. employees.

By permitting the Maintenance of Way Track Gang to perform this work, the Organization contends that the Carrier thereby has violated the Scope Rule and a Memorandum of Understanding dated April 3, 1956. The Scope Rule reads as follows:

"SCOPE

These Rules, subject to the exceptions hereinafter set forth, shall constitute separate Agreements between the Pennsylvania Railroad Company, and Baltimore and Eastern Railroad Company and their respective Telegraph and Signal Department employees, of the classifications herein set forth (and hereafter these Agreements for the sake of convenience shall be referred to as "the Agreement")—engaged in the installation and maintenance of all signals, interlockings, telegraph and telephone lines and equipment including telegraph and telephone office equipment, wayside or office equipment of communicating systems (not including such equipment on rolling stock or marine equipment), highway crossing protection (excluding highway crossing gates not operated in conjunction with track or signal circuits), including the repair and adjustment of telegraph, telephone and signal relays and the wiring of telegraph, telephone and signal instrument cases, and the maintenance of car retarder systems, and all other work in connection with installation and maintenance thereof that has been generally recognized as telegraph, telephone, or signal work represented by the Brotherhood of Railroad Signalmen of America and shall govern the hours of service, working conditions and rates of pay of the respective positions and employees of the Pennsylvania Railroad Company, and Baltimore and Eastern Railroad Company, specified in Article 1 hereof, namely, inspectors, assistant inspectors, foremen, assistant foremen, leading maintainers, leading signalmen, signal maintainers, telegraph and signal maintainers, telegraph and telephone maintainers, signalmen, assistant signalmen, and helpers.

(Effective June 1, 1950) The employees in the Telegraph and Signal Department shall continue to install, maintain and repair, and do testing incident thereto, of all devices and apparatus, including air compressors, motor generator sets, and other power supply, (when such compressors, sets or power supply are used wholly or primarily for signal or telegraph and telephone devices, apparatus or lines, and are individually housed in signal or telegraph and telephone facilities) which are part of the signal or telegraph and telephone systems, to the extent that such work is now being performed by employees of the Telegraph and Signal Department. This paragraph shall not, however, prejudice any rights which such employees may have under the Scope Rule, exclusive of this modification, to claim work performed by other crafts in violation of the Scope Rule."

As one can readily ascertain from reading the above rule, this is not a broad, general type of Scope Rule, but on the contrary is one which describes specifically the work to be performed by employees in the classification to which Claimants belong. We direct attention to the following excerpts from the rule:

"engaged in the installation and maintenance of all signals, interlockings, telegraph and telephone lines and equipment including telegraph and telephone office equipment * * *.

"And all other work in connection with installation and maintenance thereof that has generally been recognized as telegraph, telephone, or signal work * * *"

Carrier contends that since the specific portion of the Rule does not mention the digging of holes, the Organization must of necessity place its reliance on the latter general phrase and that in so doing, must show that the work involved, belonged exclusively to Signalmen by reason of custom, practice and tradition. Carrier further defends its action in this case by alleging the existence of an emergency due to the snow storm and the extremely dangerous icy conditions. Insofar as the Memorandum of Understanding is concerned, Carrier takes the position that it relates only to the digging and backfilling of trenches used for burying signal cables, and makes no reference whatsoever to the digging of holes for telephone poles.

The burden of proving every element of a claim rests with the Petitioning party, and the specific portion of the Scope Rule quoted above, refers to installation and maintenance etc., but does not specifically mention the work involved in this dispute. If by installing, the custom and practice has been the digging of holes by C. & S. employees to the exclusion of all other classifications of employees on this Carrier's property, then evidence should have been presented to this effect. It may well be that these employees have the exclusive right on this Carrier's property, but we find no evidence in this record to substantiate this position. This we find equally applicable to the specific and general portions of the Scope Rule.

Insofar as the Memorandum of Understanding is concerned, we agree with the Carrier's position on this matter and we find the long list of cases settled by the parties as a result of this Memorandum very persuasive of Carriers' point of view, Carrier quite properly presented these cases as evidence and we, based on these cases and the Memorandum itself, conclude that the work in this case was a subject not intended to be included nor in fact was it included within its' purview.

For the foregoing reasons, we will deny 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 Agreement was not violated.