

Award No. 18919
Docket No. SG-15553

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claims of the General Committee of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company (Pacific Lines) that:

CLAIM NO. 1

(a) The Carrier violated the current Signalmen's Agreement, effective April 1, 1947 (reprinted April 1, 1958 including revisions), when it failed and/or declined to apply the Scope Rule and Rule 70 or other provisions of the agreement on January 20, 23, and 24, 1964, by allowing persons not covered by the agreement to operate signal equipment at Grass Lake, California.

(b) Mr. K. E. Killingbeck, Signal Maintainer—Mt. Hebron, California, be allowed two calls, five and one-third ($5\frac{1}{3}$) hours for January 20, 1964; one call, two and two-thirds ($2\frac{2}{3}$) hours for January 23, 1964; and one call, two and two-thirds ($2\frac{2}{3}$) hours for January 24, 1964 — all at his time and one-half rate of pay.

(Carrier's File: SIG 152-152.)

CLAIM NO. 2

(a) The Carrier violated the current Signalmen's Agreement, effective April 1, 1947 (reprinted April 1, 1958 including revisions), when it failed and/or declined to apply the Scope Rule and Rules 15, 16, and 70 by allowing an employee not covered by this agreement to perform recognized signal work on February 15, 1964 — such work being that of operating gas (propane) switch heaters at Grass Lake, California.

(b) Mr. K. E. Killingbeck, Signal Maintainer—Mt. Hebron, California, be allowed five and one-third ($5\frac{1}{3}$) hours at his overtime rate of pay for February 15, 1964. (Carrier's File: SIG 152-161.)

EMPLOYES' STATEMENT OF FACTS: This dispute is based on our contention that Carrier violated the current Signalmen's Agreement when it

off) by train dispatchers by remote control through the signal system. However, due to lack of materials the Signal Department had been unable to complete the installation, and had only installed the heater pipes and the connection to the propane tank. None of the controls, which are part of the signal system, were installed on these two switches; therefore, they had to be turned on and off by hand by someone at the site.

3. When heavy snows occurred during the latter part of January 1964, while the installation was still incomplete, maintenance of way employees were used to light and extinguish the two heaters by hand at Grass Lake.

4. Claim No. 1 (Carrier's file SIG 152-152) was presented in behalf of Signal Maintainer K. E. Killingbeck, hereinafter referred to as claimant, based on the contention that service performed by track laborers at Grass Lake January 20, 23 and 24, 1964, was signal work. Copy of Local Chairman's letter dated February 8, 1964, submitting claim to Carrier's Division Superintendent, is attached to Carrier's Exhibit A. Copy of Superintendent's denial of the claim dated February 28, 1964, is reproduced as Carrier's Exhibit B. Copy of the General Chairman's letter of April 2, 1964, appealing said claim to Carrier's Assistant Manager of Personnel, is attached as Carrier's Exhibit C and copy of the latter's letter of May 21, 1964, denying the claim is attached as Carrier's Exhibit D.

Claim No. 2 (Carrier's file SIG 152-161) was presented in behalf of claimant based on the contention that service performed at Grass Lake, by Maintenance of Way Truck Driver Larson on February 15, 1964, was signal work. Copy of Local Chairman's letter dated February 29, 1964, submitting claim to Carrier's Division Superintendent, is attached as Carrier's Exhibit E. Copy of Superintendent's denial of the claim dated April 14, 1964, is reproduced as Carrier's Exhibit F. Copy of the General Chairman's letter of April 28, 1964, appealing said claim to Carrier's Assistant Manager of Personnel, is attached as Carrier's Exhibit G, and copy of the latter's letter of June 23, 1964, denying the claim, is attached as Carrier's Exhibit H.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization bases this claim on the contention that Carrier violated the Signalmen's Agreement when it called other than signal forces to manually light and extinguish propane switch heaters at Grass Lake, California, on the maintenance territory of Claimant on the dates in question.

The Organization's position in support of this Claim is stated in Local Chairman R. P. Smick's letter of March 28, 1964 to Carrier's Superintendent, W. C. Morris, wherein he states:

"Here the heaters were installed by Signal Department employees and are being maintained by Signal Department employees and all the controls and valves in connection therewith are supposed to be in housings which are kept under Signal lock. Therefore, it is our contention that any work whatsoever in connection with these heaters enures to Signal Department employees regardless of whether or not the heaters are in any way connected to the Signal System.

From this inception to date the work in connection with these switch heaters has been assigned to Signal Department employees and

as such has become generally recognized as work belonging to the Signal Department and it is our contention that this work is covered by our Scope Rule which specifies that Signal Department employees are entitled to the work of * * * and all other work generally recognized as signal work performed in the field or signal shops.' Therefore, it is our belief that any work in connection with switch heaters is exclusively the duty of employees covered by the Signalmen's Agreement."

Carrier's position is that the work of lighting and/or extinguishing switch heaters is not specifically contained in the Signalmen's Scope Rule, nor has the work of turning on and off switch heaters ever been "work generally recognized as signal work" on this property; that the heaters were not connected in any way with the signal system and were merely in the same category as any other heater having no automatic control; that Maintenance of Way employees have been used to light and extinguish such heaters on the property since time immemorial; that the work in dispute was not work associated with the installation, repair, maintenance, etc. of the switch heaters, but was simply the act of turning the heaters on and off; that even if the installation of these switch heaters had been completed and had been connected into the signal system, the turning on and off of the heaters would still have not been performed by signal forces, but rather would have been performed by the train dispatcher, in the same manner that the train dispatcher activates controls to operate other appurtenances of the signal system; that the simple act of turning on and off of switch heaters clearly has never been recognized as work exclusively reserved to Signal employees on this property, even though they along with other classes of employees have been and are so used to perform such work on occasion, and Petitioner cannot establish otherwise.

The Maintenance of Way employees filed a submission before this Board and alleges that the work in dispute is neither that of operating signal equipment nor that of performing recognized signal work nor that of operating gas (propane) switch heaters; that the work involved is simply lighting switch heaters for the purpose of removing snow from switches in lieu of sweeping snow out of switches with brooms and also extinguishing the heaters; that switch heaters are not signal equipment, and lighting and extinguishing said heaters is not signal work; that Maintenance of Way employees (track department) have been used by Carrier to light and extinguish switch heaters since time immemorial.

There is no express reference to the work in dispute in the Scope Rule of the Signalmen's Agreement. This Board in Award No. 11526 stated that it is a well-established principle of this Division that where there is no express reference to the work in the Scope Rule that the intent of the parties can only be ascertained by past practice, custom and usage on the property, and cited a number of Awards in support of said principle.

We find in this instant that the Organization failed to prove that the work in question by practice, custom and usage has been done system-wide exclusively by Signalmen, and thus we must deny the claim.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 7th day of January 1972