

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19447
Docket Number SG-19448

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Louisville and Nashville Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company:

On behalf of Signal Maintainer K. E. Cheatwood for eighty (80) hours at his respective overtime rate, account Electricians wiring new compressor at Boyles Yard, Alabama. Time and dates involved include eight hours per day on the following dates--July 29, August 1, 4, 5, 6, 7, 8, 11, 12, and 13, 1969.

This time is claimed under Rule 1. Scope of the current Signalmen's Agreement, which specifically assigns this type work to our Signal forces.
[Carrier's File: G-304-12; G-304/

OPINION OF BOARD: This is a Scope Rule claim based on allegations that work preserved to Signalmen by the Agreement was performed by Electricians on July 29, August 1, 4, 5, 6, 7, 8, 11, 12, and 13, 1969. A companion case in Docket No. SG-19449 raises an identical issue for the dates of October 14 and 15, 1969. Accordingly, Docket No. SG-19449 will be decided by the opinion herein with a memorandum opinion to that effect being issued separately under Docket No. SG-19449.

In the instant case and also in Docket No. SG-19449, the International Brotherhood of Electrical Workers filed a submission asserting that the disputed work is covered by the Carrier's Agreement with the Electrical Workers and that Carrier properly assigned the disputed work to the Electrical Workers.

FACTS OF RECORD

The pertinent part of the Signalmen's Agreement reads as follows:

"RULE 1. SCOPE

This agreement covers the rates of pay, hours of service and working conditions of all employees, classified herein, engaged in the construction, installation, repair, inspecting, testing and maintenance of all interlocking systems and devices; signals and signaling systems; wayside devices and equipment for train stop and train controls; car retarders and car retarder systems; power operated gate mechanism; automatic or other devices used for protection of highway crossings; spring switch

"mechanism; electric switch targets together with wires and cables; train order signals in signaled territory and elsewhere within the limits of a signal maintainer's territory; power or other lines, with poles, fixtures, conduit systems, transformers, arresters and wires or cables pertaining to interlocking and signaling systems; interlocking and signal lighting; storage battery plants with charging outfits and switch board equipment; sub-stations, current generating and compressed air plants, exclusively used by the Signal Department, pipe lines and connections used for Signal Department purposes; carpenter, concrete and form work in connection with signal and interlocking systems (except that required in buildings, towers and signal bridges); together with all appurtenances pertaining to the above named systems and devices, as well as any other work generally recognized as signal work.

NOTE 1: Effective March 4, 1935, the following is applicable to all seniority districts except Seniority Districts Nos. 9 and 10:

It is understood that any General painting project not in connection with signal construction should be carried out by men coming under the maintenance of way agreement; however, if necessary to paint signal blades, wigwag banners for improving visibility; also when necessary to paint the outside of instrument cases, relay boxes, and battery box covers to prevent damage from rust as occasion may require, the signalmen should do the work. When it is necessary to paint the inside of cases housing signal apparatus, instruments and mechanisms, interlocking and train order signal machines, including levers, such painting will be done by the signalmen.

NOTE 2: Effective March 22, 1961, work covered by signal employes on Seniority Districts Nos. 9 and 10 with respect to:

painting
train order signals
bonding of track
yard track indicators
crossing gates

shall continue to be performed by signal employes on those districts." (Underlines added.)

The pertinent part of the Electricians' Agreement, Rule 132(a), Electricians' Classification of Work, reads as follows:

"132(a) - Electricians' work shall consist of maintaining, repairing, rebuilding, inspecting and installing the electric wiring of all generators, switchboards, meters, motors and controls, rheostats and controls, motor generators, electric headlights and headlight generators, electric welding machines, storage batteries, axle lighting equipment, radio equipment, electric lighting fixtures, winding armatures, fields, magnet coils, rotors, transformers and starting compensators; inside and outside wiring at shops, buildings, yards, and on structures, and all conduit work in connection therewith, including steam and Diesel electric locomotives, passenger trains, motor cars, electric work on tractors and trucks; building, repairing and maintaining of pole lines and supports for service wires and cables, overhead and underground, together with their supports. Cables, cable splicers, high tension power house and substation operators, high tension linemen, electric crane operators for cranes of 40-ton capacity or over, and all other work generally recognized as electricians' work." (Underlines added.)

On August 4, 1971, Carrier commenced work of wiring in a new air compressor at the Boyles Retarder Yard, Boyles, Alabama. Local signalmen and electricians worked together in the wiring of the new compressor, which was completed on or about August 13, 1956. The time charged to the work by the electricians amounted to fifty-five (55) hours straight time and six (6) hours overtime. The specific dates and time are as follows:

"Aug. 4 (4 hrs.), 5 (12 hrs.), 7 (12 hrs.), 8 (13 hrs.),
11 (6 hrs.S.T. - 6 hrs.O.T.), 12 (4 hrs.), 13 (4 hrs.).
Total of 55 hrs. S.T. and 6 hrs. O.T."

The Claimant, Signal Maintainer K. E. Cheatwood, seeks an award of eighty (80) hours pay at his overtime rate on account of the electricians allegedly performing work which he should have performed. During the period in question, Mr. Cheatwood worked on and received eight hours straight time pay for each of the following dates: July 29, August 4, 5, 6, 11, 12, and 13, 1969. August 1, 7, and 8 were Claimant's off days for which he was not paid.

In handling on the property the Carrier took the position that the Signalmen Agreement did not give the disputed work exclusively to signalmen and that, in addition, a precedent had been established by several previous instances of such work being performed jointly by signalmen and electricians. Carrier also noted that it had received complaints from electricians on prior occasions, but none from signalmen, and that its disposition of the matter reflected an effort to be fair to both crafts. Carrier asserted that Claimant lost no time as a result of the Electricians participation in the wiring of the compressor.

The essence of Petitioner's position was that, since Rule 1 of the Signalmen Agreement expressly and unequivocally covered the disputed work, Rule 132(a) of the Electricians' Agreement and past practice thereunder could not establish an enforceable practice which "is in conflict with the terms of the controlling agreement". Petitioner also refused to recognize that a precedent had been established.

In Docket No. SG-19449 Claimant Cheatwood seeks sixteen (16) hours overtime pay in connection with work on October 14 and 15, 1969 involving a new No. 2, 14" x 12" air compressor at the Boyles Retarder Yard, Boyles, Alabama. Two local signalmen and two electricians worked together in the wiring of the controls of the compressor. Carrier asserted on the property that Claimant would not have been the employee assigned the work even if Carrier had regarded it as signalmen's work. Except as indicated in this paragraph, the material facts and issues in Docket No. SG-19449 are identical to those in the instant case (Docket No. SG-19448).

RULINGS ON PETITIONER'S CONTENTIONS

Petitioner correctly asserts that the disputed work is expressly covered by the Signalmen's Scope Rule. The Rule covers "the installation ... of all ... car retarders and car retarder systems ... and compressed air plants, exclusively used by the Signal Department ... together with appurtenances pertaining to the above named systems and devices." This language covers the disputed work precisely and unambiguously and, indeed, it would be difficult to imagine language better tailored to cover the work. We cannot, therefore, conjecture that the intent of the parties was other than as stated in the agreed language.

We therefore have to consider the question of whether such a clearly stated reservation of work can be altered by prior practice, or by an established precedent. We will answer this by holding, as in prior decisions, that practice and precedent are of no avail to alter contract language of the specificity involved here. In consequence, we find that Carrier violated the agreement by assigning electricians to perform the disputed work.

As to the award, however, we believe the Petitioner's claim for eighty (80) hours overtime herein, and sixteen (16) hours in Docket SG-19449, would be too severe in light of all the circumstances. Confronted with what it regarded as two Scope Rules, which overlapped the same work, the Carrier decided to have the work shared between the two seemingly covered crafts. This decision, made in a complex situation, was obviously an effort to avoid controversy and to be fair to employees of both crafts.

We will therefore award compensation not for the full amount of work performed by the electricians, but only for the days Claimant was off while the electricians performed signalmen's work. The record does not show that electricians worked on August 1, 1969, which was one of Claimant's off days; however, in order to balance the equities of the case, we will include pay for August 1 in our award. Accordingly, we sustain the claim of Mr. Cheatwood for pay at his overtime rate for August 1, 7, and 8, 1969.

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 violated.

A W A R D

Claim sustained to the extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killam
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1972.