

NATIONAL RAILROAD ADJUSTMENT. BOARD

THIRD DIVISION

Award Number **19822**
Docket Number SG-19460

John H. **Dorsey**, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General **Committee** of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company that:

(a) The Southern Pacific Transportation Company violated the Agreement between the Company and the Brotherhood of Railroad Signalmen effective April 1, 1947 (reprinted April 1, 1958, including revisions) particularly the Scope Rule and Rule 13, which resulted in violation of Rule 70, account **recognized** signal work performed by an **employee** not covered by the Scope Rule **or** any other rule in the current Signalmen's Agreement.

(b) Mr. **J.G. D'Amico** be allowed four (4) hours compensation at his time and one-half rate for June 5, 1970, in addition to compensation allowed for that date. (Carrier's File: SIG 152-273)

OPINION OF BOARD: On June 5, 1970, starting at approximately **5:45** A.M. Signal Supervisor H. M. **Silva** started driving a boom truck (LA-654) from Burbank to Oxnard. The truck had been loaded by employees covered by the Signalmen's Agreement; and, it was unloaded at Oxnard by covered **employees**.

It is the contention of Signalmen that "inasmuch as the primary purpose in moving the boom truck with signal material from Burbank was **for** use on the signal construction project in progress at Oxnard, the operation of the boom truck with signal material from the time it was moved from Burbank was work that accrues to Signal employees covered by Signalmen's **Agreement**."

Paragraph (a) of the Scope Rule, in its enumeration of work reserved to Signalmen, does not include driving a truck loaded with signal material and equipment. The concluding clause of that paragraph is general in nature and reads: "and, all other work generally recognized as signal work performed in the field **or** signal shops." The issue presented is whether the driving of the truck here involved is work contemplated and encompassed in that clause. **Signalmen** have the burden of proving that it does by adducing, on the property, a preponderance of substantial evidence of probative value to support a finding that by practice, history, custom and tradition the work involved has been system-wide exclusively performed by Signalmen.

The Local Chairman and the General Chairman, in the handling of the dispute on the property, made declaratory statements -- of no evidentiary value -- that the exclusivity precedent was de facto; but, Signalmen failed to prove it. Consequently, Signalmen failed to satisfy its burden of proving a **prima facie** case of Agreement violation. Therefore, we **are** compelled to dismiss the Claim for failure of proof.

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 Claim must be dismissed for failure of proof.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1973.