NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19832
THIRD DIVISION Docket Number SG-19013

Joseph A. Sickles, 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 Company (Pacific Lines) that:

(a) The Southern Pacific Company (Pacific Lines) violated the Agreement between the Company and the Employes of the Signal Department, represented by the Brotherhood of Railroad Signalmen effective April 1, 1947 (reprinted April 1, 1958, including Revisions) and particularly the Scope Rule.

(b) Signal Foreman C. C. Anson, Lead Signalman A. J. Blanchette, Signalmen 0. J. Rogers and A. A. Farley and Assistant Signalmen P. J. Brown and B. B. Menn, be compensated eight hours each at their straight time rate in addition to any other amount earned on June 6, 1969, because of the violation. (Carrier's File: SIG 152-256)

OPINION OF BOARD: The record, as it was processed on the property, demonstrates the following facts. On or about May 30, 1969, five poles were sheared off in an accident. One of the cross arms of each pole carried a signal code Line, along with eight communication Lines. On June 3, 1969, the Carrier used Communication Department employees to make permanent repairs, by restoring the poles and cross arms and fastening wires to the cross arms. Those employees fastened the signal code lines, with circuit intact, to the cross arm by changing of the code Line from the old to the new cross arm.

The Organization's claim is submitted on behalf of six Signalmen for compensation at the straight time rate for eight hours each for the day in question because of an alleged violation of the Scope Rule.

In discussions on the property, the Organization asserted that where joint facilities were utilized, lacking an agreement to the contrary, each department performed its own particular work and that work in connection with the signal Lines is work which properly belongs to the Signal Department.

The Carrier asserted that the "minor" operation of changing signal code lines from old to new cross arms has been performed by the communication department for many years, as an incidental chore when that department was changing communication lines from an old to a new cross arm.

The Organization claims that the work in question is specifically covered by the written Agreement and it is therefore unnecessary to consider custom, tradition and/or practice, or the doctrine of "exclusivity." Further, the Organization asserts that even if the specific written Agreement does not cover the work, it must prevail because it has demonstrated that the work has always been performed by bargaining unit employees, to the exclusion of others,

The Scope Rule of the Agreement covers, among other things, construction, reconstruction, installation, maintenance, testing, inspecting and repair of wayside signals, pole line signal circuits and their appurtenances, ...". The question is thus raised as whether those words, especially "reconstruction" and "repair" of wayside signals, poles line signal circuits, etc., would be broad enough to include replacing the signal code line from one cross arm to another when the circuit remains intact. It would appear that the language is broad enough to encompass the "minor operation" of chaning a code line from an old for a new cross arm, as part of the reconstruction and/or repair of wayside signals. Under that theory, it would be unnecessary for the Organization to demonstrate exclusive performance of the work on a systemwide basis. In any event, we feel that the status of the record, as processed on the property, supports the Organization's position in that regard. It should be noted that much of the entire record deals with assertions and allegations raised by both parties after the matter was handled on the property. Those matters have been disregarded and this Board has limited its review solely to the matters raised and considered prior to issuance of the notice of intention to file a submission with this Board.

In October of 1969, the Carrier issued a denial of the claim in the normal steps of the grievance machinery. In December of 1969, the Organization commented upon the denial and submitted five statements from individuals which supported the Organization's contentions concerning the performance of the work in question. Those documents referred to activities in Oregon, the "Shasta" District, New Mexico, and Nevada. The documents described that work similar to that in question had been performed, by signalmen on joint (signal and communication) pole Lines, for significant periods of time. One document stated that in New Mexico, in 1969, communication employees had changed forty poles and because no Signal Department labor was available to work on the cross arm to which the signal circuit wires were attached, they were left hanging on the old poles to be transferred to the new poles when signal Labor was available.

If, a Scope Clause is not specific in nature and the written Agreement does not specifically define work, in order to prevail in a claim of violation of the Scope Rule, an organization must demonstrate-by a preponderance of competent evidence-tradition, custom and/or practice on the property showing exclusive performance of work. The question arises, obviously, as the quantum of proof necessary in that regard. In this case, Organization Officials and Company Representatives in grievance machinery correspondence made mutually exclusive conclusionary statements concerning prior performance of the work. The Organization asserted "exclusivity", and the Carrier denied it. The Organization then presented five statements from individuals who had physically performed the work in question or had reasonable opportunity to observe the practice. It would appear incumbent

upon the Carrier, at that point in time, to produce contrary documentation if it intended Later to urge that the Organization did not establish its claim by a preponderance of competent evidence. It is, of course, sometimes difficult for the Board to assess the evidence adduced on the property because we operate without the benefit of a "de novo" hearing to explore factual differences. Thus, in fulfilling its obligation to weigh the evidence, this Board must consider everything submitted on the property prior to a notice of intention to file a case with the Board. Although the documents in question were not presented in the early stages of the handling of the dispute, nonetheless, they were submitted to the Carrier some six months prior to the filing of the notification of intention. This Board is not aware of any rule or procedure which would have precluded the Carrier from replying to the Organization's assertion and submitting contrary evidence. Clearly, if evidence were submitted within such a short time of filing of the notification of intention so as to reasonably preclude the Carrier from replying, the weight of such evidence might be suspect, but no such danger exists here. For the Board to refuse to credit the five documents in this case would result in the Board being provided with even less information upon which to base its determinations, and we submit that such a procedure is not desireable nor would it aid the orderly determination of disputes. Consequently, limiting our review of the record to matters raised and considered on the property, we are of the view that the Organization overcame the Carrier's conclusionary statements regarding "exclusivity" and the record supports the Organization's claim. Nor does the record before us reasonably suggest that the performance was other than "system-wide".

The Carrier raises the question of the rights of the Communication Department employees as represented by the International Brotherhood of Electrical Workers, under the Supreme Court determination in Transportation Communication Employees Union v. Union Pacific Railroad, 385 US 157.

The IBEW did submit a Letter in which it concluded that the Carrier properly assigned the labor in question to electrical workers. The Board is of the view that within the context of the Organization's Scope Rule that Signalmen were entitled to perform the work in question. This is not to suggest, in any manner, that the signalmen, by this determination, gain any rights to perform Communication Department work on joint facilities.

This Board is aware of the determination in Public Law Board No. 747 which held that the transferring of signal wires to the new cross arms must be viewed as "incidental" to the carrying-out of a primary function of communication workers and consequently not a breach of the Signalmen's Scope Rule. It may be that said work was incidental, but a Scope Rule decision should not rest upon the quantum of work involved as that is a matter better left for the parties to resolve in collective bargaining. In this regard, we have noted that a "ten-minute" claim, which might be considered to be "minor" has been sustained by the Board. Award No. 19387 (Cole).

Concerning the Carrier's assertion that the Scope Rule is confined to work of the "Signal Department" we find that the Carrier's argument does not materially aid the Board because a determination of the identity of the department required to perform the work is, in essence, the dispute before this Board. Finally, the Board must consider the question of awarding monetary compensation. In the claim, the Organization identified six individuals and requested compensation at the straight time rate for eight hours each.

This Board is not reluctant to award a claim for damages when an agreement has been violated, however the Board is of the view that there must be some basis specified by the Organization, on the property, for its claim and that the Board may not speculate as to damages. We are not advised in what manner the Organization concludes that six individuals are entitled to eight hours of pay each. It may be that the signal crew was comprised of six individuals and it is assumed that all would have been dispatched to the site for a full day. At the same time, we are aware from the evidence of record that the signal work was relatively minor as far as time consumed by communication department employees. Consequently, from the evidence of record, an award of damages would be speculative and therefore the Board will not award compensation under this particular record.

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 violated.

A W A R D

Claim (a) is sustained. Claim (b) is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Zillen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1973.