

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20510
Docket Number SG-20161

Irwin M. Lieberman, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company
((Chesapeake District)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood of Railroad Signalmen **on** the Chesapeake and Ohio Railway Company (**Chesapeake** District) that:

a) The Carrier violated the current Signalmen's Agreement, particularly Scope Rule 1 and Rule 25, when on August 28, 1971 it **allowed Assistant** Signal Supervisor J. B. Dowdy to assist in clearing signal trouble on the **CTC** machine located in the Covington, **Ky.**, train dispatcher's office. As a result we now ask:

b) The Carrier pay Lead Signal Maintainer Ii. Ii. Parker and Assistant Signal Maintainer L. P. Greene each a call of two hours and forty minutes at their overtime rate of pay **for the** violation cited in part (a) of this claim, such time of Parker to **be in** addition to his monthly protected rate **of** pay as outlined in Memorandum of Agreement dated March 5, 1968. **Carrier's** File: 1-SG-300/

OPINION OF BOARD: Claimants were the regularly assigned Leading Signal Maintainer and Assistant Signal Maintainer at Stevens, Kentucky which **assignment** included within its territory the Covington, Kentucky office of Carrier. On August 28, 1971, a regularly assigned rest day of Claimants, Carrier experienced difficulty with the Centralized Traffic Control machine in the dispatching office at Covington: the machine was indicating the absence of a train on a section of track near **Columbus**, Ohio when one was in fact present. The Assistant Signal Supervisor, a Carrier officer not covered by Petitioner's Agreement, was called in to determine the cause of the trouble. After making the necessary inspections and tests he found the cause of the difficulty was in the repeater house at **Maysville**, Kentucky and the Lead Signal Maintainer assigned to that location was called out to correct the trouble (for which he was properly compensated under the call rule). Subsequent to the time the repairs were made the Assistant Signal Supervisor was required to make further tests and checks in the Dispatcher's office to make certain that the trouble had been corrected.

The pertinent Rules read as follows:

RULE 1 - SCOPE

"This agreement covers rates of pay, hours of service, and working conditions of all employees engaged in the **main-tenance**, repair, and construction of signals, interlocking plants, highway crossing protection devices and their appurtenances, wayside train stop and wayside train control equipment, car retarder systems, including such work in signal **shop**, and all other work generally recognized as **signal** work. It is understood the classifications provided by Rules 2, 3, 4, 5, and 6 include all the employees of the signal department performing the work described in this rule.

RULE 25 - WORK OUTSIDE OF ASSIGNED HOURS
(Effective September 1, 1949)

Employees assigned to or filling vacancies on maintainer positions will notify the person designated by the management where they may be called and will respond promptly when called. If they are needed for work outside of regular assigned hours, the maintainer on whose territory the work is required will be called first. If not available, another qualified employee will be called. When a maintainer knows that he will not be available for calls on his days off duty, he will notify the designated person and there will be no obligation to attempt to call him. This shall not apply to monthly rated traveling mechanics covered by Rule 54."

Petitioner's position is that both Claimants were available for call and the work done by the Supervisor was work which belonged to **employees** covered by the Agreement. While acknowledging the Supervisor's managerial **prerogatives**, the **Organization** contends that the testing and checking work he performed should have been assigned to Claimants.

Carrier argues that the Supervisor's checks were not routine "work" but were made to determine the **precise location** of the signal trouble so that he could call the proper signal **employees** to perform the repair work. Further Carrier states that the Scope Rule in this dispute is a general rule and does not include inspection and testing as do some Scope Rules. Carrier insists that the activities of the Assistant Signal Supervisor in evaluating the trouble was in the proper exercise of **managerial prerogatives in** order to determine **what** work had to be done and who should do it. Additionally, Carrier urges that there is no Agreement support, in any event, warranting two Claimants.

The key question in this dispute is whether or not there was any **signal** work **performed** by the Supervisor at **Covington**, Kentucky which should properly have been **accomplished** by **employees** covered by the Agreement. First, Carrier has argued that the Scope Rule of the Agreement does **not** include inspection **and** testing as do many Scope Rules covering signal employees. In our examination of prior Awards of this Board it is noted that in Award 4828, involving an almost identical Scope Rule as that herein, we said:

"The foregoing Scope Rule clearly includes testing and inspecting of apparatus. Such work is necessary, not only to determine the cause of trouble after it has **occurred**, but also as safeguard against functional **failure**.....It will be conceded at the outset that all inspecting of signal apparatus in the field is not reserved by the Agreement. All supervisory **officers** are charged with varying **amounts** of **inspection** work which is inherent in their positions. But it does not include the inspecting **and** testing necessary to the proper installation, maintenance and repair of the signal system."

The Carrier quite **properly** asserts that it has the right to determine what work is to be performed **and** to make work assignments after such inspections (Award 6221, for example, supports this position). However, we have also said that the problem of where to draw the line between such inspections and work properly accruing to covered **employees** is a matter of degree and circumstances (Award 8049).

In the instant dispute, on the property, Petitioner asserted that certain tests were necessary in the **Covington** office to determine the **nature** of the problem and its location **and** also tests were required after the repair work was completed in the field to make certain that the CTC apparatus was functioning properly. These statements **were** never challenged by Carrier and **must** be considered factual. The practice of Carrier has also been raised in past **comparable** situations. It appears **from** a survey conducted by Carrier that **in** five of its Divisions the practice has been to call the Supervisor in the event of trouble with the **CTC** machines **and** in two Divisions covered employees have been called; this incident took place **on** a Division where the practice has been to call a supervisor. We **must** conclude that the past practice has been at best ambiguous, and the practice is being challenged by the Organization in **any event**.

Our conclusion is that supervisors have the right to inspect equipment only for the purpose of determining the nature of the problem **and** in order to assign proper **personnel** to make repairs; when such inspection also includes making tests of the equipment to determine the

nature of the malfunction as well as tests after the equipment has been repaired, it should properly be performed by employees charged with **the maintenance** of the apparatus. The **line must** be drawn between supervisory inspection and testing work. In this dispute the supervisor, based on admitted but meager evidence, transcended his **managerial prerogatives** and performed tests which should have been **performed** by the Signal Maintainer. **There** appears to be no Rule support whatsoever for the Claim of two **employees** for such work. Consequently the Claim will be sustained on behalf of the Lead Signal Maintainer only.

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

Part (a) of the claim is sustained; Part (b) of the claim is sustained with respect to the Lead Signal Maintainer and denied with respect to the Assistant Signal Maintainer.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 8th day of November 1974.