NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20553

THIRD DIVISION Docket Number SC-20207

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Burlington Northern Inc. (Formerly Spokane,
(Portland and Seattle Railway Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Spokane, Portland and Seattle Railway Company:

In behalf of Signal Gang Foremen Z. A. Potts and B. A. Gordon; Signalmen A. E. Pethoud, A. E. Schwinof, D. C. Foster, J. E. Ross, D. K. Brandon, C. A. Senter, and R. L. Gelderman; and Assistant Signalman G. A. Guest for two (2) hours' pay at their respective pro rata rates of pay for time employes of the former Northern Pacific Railway, consisting of two Gang Foreman, seven Signalmen, and one Assistant Signalman of Northern Pacific Signal Gangs #1 and #5 were used to unload three CTC bungalows from a flat car at Nemour Spur on former S. P. & S. Railway property. These bungalows to be installed at East Overlook, West Overlook, and Scribner, Washington, all on former S. P. & S. Railway property.

(Carrier's File: SI-84(i) 2/14/72)

OPINION OF BOARD: Claimants, at the time of the dispute herein, all held regular signal construction crew assignments on the former Spokane, Portland and Seattle Railway which was one of four railroads which merged on March 3, 1970 to form the Burlington Northern, Inc. The incident in question took place after the merger but before the consolidation agreement was effective.

On January 11, 1972 the Carrier received, via flat car at Nemour Spur, Washington, three CTC bungalows purchased from an outside manufacturer. The bungalows were scheduled for installation at a later date at three locations which were from one to two and a half miles from Nemour Spur. The work of unloading and storing the bungalows was assigned to a Carrier signal construction crew working under the Signalmen's Agreement of the former Northern Pacific Railway Company, another component company of the Burlington Northern merger. The bungalows remained stored for about three weeks, at which time they were moved to their designated points for installation.

The Organization alleges that Carrier, by the assignment described above, arbitrarily diverted work covered by the Scope Rule to non-covered employees. The Scope Rule provides:

"SCOPE

Ibis agreement covers the rates of pay, hours of service, and working conditions of all employes, classified in Article 1, engaged in the construction, installation, repair, reconditioning, inspecting, testing and maintenance, either in the shop or in the field, of any and all Signal system6 and/or interlocking systems, slide detector devices connected with signal systems, gas or electric switch heaters located in signalled territory, car retarder systems, centralized traffic control systems; relay housing and wiring; and appurtenances connected with such systems; signal shop work; including all apparatus and devices in connection therewith, and such other work as is generally recognized as signal work.

It is understood the following classifications shall include all the employes of the Signal Department performing the work described under the heading of 'Scope.' "

Petitioner argues that the unloading of the bungalows was an integral and necessary part of the signalmen's duties in installing them. Petitioner also claim6 that even if the work is not covered by Agreement, when Carrier gives it to a certain craft of employes, that craft's Agreement must be observed. A number of Awards were cited by Petitioner in support of its arguments, notably Award 5046 (and a series of following opinions) and Award 5604 and other Awards following it holding that where Carrier is not obliged to use employees of a certain class, but chooses to do so, it is obliged to choose from that class according to seniority.

It is clear, 86 contended by Carrier, that the work in question is not covered by the Scope Rule. Furthermore there is no evidence in the record which would establish that the work in question was exclusively reserved to Claimants through tradition, custom and practice. In fact Carrier presented information on the property showing that Identical bungalows had been received and unloaded by Store6 personnel for subsequent reloading and shipment (by Store6 personnel) for use in the field by Signal construction crews. This was not denied by Petitioner. Carrier argue6 that if the work in question could he performed by Clerk6 or maintenance of way personnel, it certainly could be performed by signal force6 working under another Agreement. In a case cited by both parties, Award 5046, we said:

"The material being moved was being distributed between Signal Maintainers' stations. It was not being hauled insofar as the record shows in connection with its actual use in signal construction or maintenance work. Under the previous awards of this Division, the work in question was not the exclusive work of signalmen. Until it becomes an integral part of a signal construction or maintenance job, the signalmen have no exclusive right to its handling. Consequently, work in connection with the moving of materials to be used by signalmen at somefuture time is not exclusively signalmen's work. But work in connection with the movement of such materials from a warehouse or material yard to a signal construction or maintenance job for immediate use on such job, is the exclusive work of signalmen."

Consonant with the reasoning expressed above, the bungalows were unloaded for future work, not immediate use, in the dispute before us; the signalmen had no exclusive right to the unloading of the bungalows under those circumstances. The other Award6 on this point cited by the Organization are not applicable, in view of the fact that the equipment in question was not immediately used in installing a signal system.

With respect to the further argument of Petitioner grounded on Award 5604, alluded to above, we note that in that Award and the following opinions, the Board concluded that the seniority right6 of the established seniority group performing the work must be observed. The dispute herein may be distinguished in that seniority rights of the Claimants were not in question, rather their right to perform the work per se. We do not agree with the interpretation urged by Petitioner that those awards require that the entire signal Agreement must be observed when employees not covered by that Agreement perform the work, as herein.

We conclude, therefore, that Petitioner ha6 not sustained it6 Claim by providing evidence, rules, or awards to support its contentions.

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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1974.

Dissent to Award 20553, Docket SC-20207

Our statement here following is not concurrence with Award 20553.

The incident giving rise to the present dispute occurred on January 11, 1972; on that date there were in effect between the Carrier and its Signalmen four separate schedule Agreements, each governing working conditions, etc., on a different, separate and distinct physical part of the Carrier, just as each had prior to the merger of the several former Carriers into the present Burlington Northern, Inc. Hence, we were not here dealing with a situation comparable to one in which a Carrier caused a group of its employes from one seniority district to invade and perform work in another seniority district, both districts being under the same schedule Agreement.

Subsequent to the date involved here, the controlling Agreement (and others) has been replaced by one covering the whole of the Carrier's property and all of its Signalmen, and the controlling Agreement in Award 20553 is no longer effective. Award 20553 is, therefore, not of precedential value.

W. W. Altus, Jr.
Labor Member