NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20979

THIRD DIVISION

Docket Number SG-20547

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Texas and Pacific Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Texas and Pacific Railway Company:

On behalf of members of Signal Gang 1643 for an additional payment at the overtime rate account required to suspend signal work for seven (7) days in September 1972 (21, 22, 25, 26, 27, 28 and 29) to perform work of Maintenance of Way employes (cutting trees and brush on the right-of-way) in violation of Rules 12 and 62 and the Scope Rule of the Signalmen's Agreement and our understanding with Mr. Wilson - his letter of-December 22, 1969. /General Chairman File 141; Carrier File: G 315-65/

OPINION OF BOARD: Signal Gang 1643 transferred communications lines from a communications pole line to a signal pole line. On occasions, the employes were required to cut trees and brush on the right-of-way. The employes contend that the work in question is work to be performed by Maintenance-of-Way Employes, and utilization of Signal Forces constituted a violation of its Scope Rule, as well as Rule 12:

"Rule 12.

Employes will hot be required to suspend work during regular working hours to absorb overtime."

Rule 62:

"Rule 62.
(Revised effective September 1, 1968)

Except in extreme emergencies, employes covered by this agreement will not be required to perform work of any other craft nor will employes of any other craft be required to perform work coming within the scope of this agreement. "

and a December, 1969 Letter of Understanding which reads, in part:

"Also, this is to inform you that signal maintainers will not be required to cut brush except in *emergencies,* and when this is done, time and one-half will be paid.

Also, signal gangs will not be used to cut brush on the right-of-way except as necessary to change poles."

Carrier states that a signal gang, involved in the transfer of a communication line, is expected to perform any and all work required to accomplish the task - including the clearing away of any brush which interferes with their work.

Carrier concedes that, from tine to time, it uses Maintenance-of-Way Employes or contractors to clear brush from the right-of-way, but it denies that said work is the exclusive domain of the Maintenance-of-Way Employes.

Carrier has cited Award 17508, which considered a dispute between these same parties, but was concerned with Signal Maintainers performing work of clearing trees and brush, outside of regular hours. The Award held:

"Under the circumstances involved we agree with the contention of the Carrier that the work of removing trees and brush from the signal wires in order to correct the signal failure was incidental to the clearing of signal trouble and could properly be required of the maintainers. The claim will be denied."

The Brotherhood of Maintenance-of-Way Employes participated in this dispute as a Third Party, and endorsed the position of the Organization.

For purposes of this dispute, we will presume - without deciding - that the Carrier is correct in its position that the work in question is not exclusively reserved to another classification of employes; that there was not a suspension of work during regular working hours to absorb overtime - as contemplated by Rule 12; and that Rule 62 was not violated.

But, the Board is still confronted with the December 22, 1969 letter from the Superintendent, Signals and Communication, to the General Chairman. The letter, on its face, appears to be a resolution of a protest, and states specifically that signal gangs will not be used to cut brush on the right-of-way except as necessary to change poles. While there is dispute as to the specific reason which prompted the assignment in question, we are unable to find that Carrier asserted - on the property - that a change in poles was involved.

We also note, at this point, that the Awards between these parties, cited by Carrier, predate the Letter in question.

For good and sufficient reason, this Board has consistently held that factual matters must be raised and considered while the dispute is under consideration by the parties on the property. While, at first blush, this rule may be considered unduly restrictive in given cases; nonetheless, it has a statutory basis and serves a valid purpose of framing issues for submission to this Board.

With this rule in mind, we have noted the Carrier's rather perfunctory treatment afforded the letter while the claim was being processed on the property.

In the initial claim, submitted on November 11, 1972, the Organization recounted certain factual assertions, and asserted that there was a violation of, among others rules,:

> "...our understanding on the subject, your letter, of December 22, 1969." (underscoring supplied)

The December 18, 1972 denial, executed by the same Superintendent who authored the December 22, 1969 letter, ignored the reference to that document.

All subsequent appeals on the property made specific reference to the December 22, 1969 document, yet, *in* denial correspondence dated February 8, 1973, February 28, 1973 and March 16, 1973 the matter was totally ignored. Finally, on July 12, 1973, in his third (3rd) letter on the dispute, the Director of Labor Relations stated:

> "...Superintendent, Signals and Communications has no authority to change or amend the Agreement and any attempt on his part to do so is not binding on the Carrier."

To be sure, the Carrier has submitted various arguments and contentions, to this Board, concerning the Legal import to be attached to the document; as have the employes. But, the only reference made by Carrier, on the property, is the one cited above - submitted some eight (8) months after the allegation of a violation of a specific agreement was made - which allegation had been consistently repeated.

We feel that if Carrier desired to attack the authority of a Carrier representative to enter into a binding document; the contents of which spoke directly to the dispute at hand, i.e., "...signal gangs will not be used to cut brush...", it should have done so in a timely manner and set forth a much more detailed factual recitation as a basis for its conclusion.

The Board suffers a similar disability concerning the question of damages for the asserted breach. Although Carrier did assert, on the property, that the employes were compensated in accordance with the provisions of the applicable Agreement, and that the gang was fully employed during the claim period, it did not do so with reference to the asserted violation of the Letter of Understanding.

Again, Carrier has raised certain contentions to us which suggest that no additional compensation is properly payable in this case. As stated above, those contentions should properly have been advanced to the employes while the dispute was under consideration on the property.

Although we sustain this claim in part, we make it abundantly clear that in doing so, we do not overturn the authority of Awards which have dealt with the ability of individuals - in subordinate capacities - to compromise positions or establish binding rules. Bather, we find that said contention is simply not before us for review in this case.

Moreover, we stress the same basic concept concerning the damage question. We are aware that this dispute deals with a situation which is reversed from the normal type presented to us. We are not here concerned with a failure to assign bargaining unit work - but rather, an addition of work. Thus, the concept of "loss of job opportunity" which is frequently a basis for a damage award in a "full employment" situation, may not be a proper consideration here. But, those concepts should have been raised before the matter was submitted to this Board.

However, the record is clear that the work involved was all performed by the employes during normal working hours (and that was raised on the property). The record is equally clear that the Agreement relied upon does make reference to overtime compensation when signal maintainers perform certain work, but no such prwision is included for similar work performed by signal gangs. Thus, the employes have not submitted any basis for an additional payment at the overtime rate. Accordingly, we will sustain the claim for additional payment at the pro-rata rate.

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 violated.

A W A R D

Claim sustained to the extent stated in the Opinion of Board, above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Panuba
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1976.