

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 21064
Docket Number SG-21086

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Louisville and Nashville **Railroad** Company

STATEMENT OF CLAIM: Claim of the General **Committee** of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad company:

On behalf of Nashville Division signal **employees** M. F. Trauernicht, J. C. Anderson, Leon **McCanless**, R. N. Freeman, J. B. **Russell** and T. D. Cook, for 80 hours each at their respective time and one-half rates, account System Signal Construction Forces performing work which is generally assigned to Division Signal Forces, **such** work performed January 17 through 24, 1972. Carrier's File: **G-304-117**

OPINION OF BOARD: **Under** Rule 32, signal **employees** have district seniority rights, and, under Rule **51(a)**:

"System gangs will be confined to construction work on new installations, except for necessary maintenance changes in connection with a construction project...."

Carrier assigned a system gang to perform certain work of moving highway crossing protection signals in **connection** with the widening of a street. The Organization asserts that district signal forces have a prior right to signal work in their respective districts - and over system forces, except as specified in Rule 51(a). The Organization concludes that there **was** no new installation.

Initially, on the property, Carrier raised the defense of "emergency", however, that assertion does not appear to be controlling. The Carrier considered the work as a construction project because existing flashing light signals were being replaced with signals and welded rail work **was** being performed.

Carrier asserts that this **same** type of work has been performed in the past on **numerous** occasions, without objection. Although the Organization disputes that assertion, it failed to offer specific rebuttal on the property. But, be that as it may, this Board is of the view that Claimants are placing an unduly restrictive interpretation on Rule 51(a). They insist that the work in question was not new installation. That **insistance** appears to overlook the exception. System **gangs** may be confined to work on new installations, except for necessary maintenance changes in connection with a construction project, and in certain types of emergencies. **Our** review of the record strongly **suggests** that the pertinent exception has been met. In its Rebuttal Statement,

Claimants allege "...a construction project is a signal construction project," We do not read the rule as being that restrictive. If, in fact, the parties intended such a limitation, it was incumbent upon the Claimants to submit evidence to support such a conclusion. Accordingly, we will 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 be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1976.