

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21477
Docket Number SG-21267

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Robert W. Blanchette, Richard C. Bond, and
(John H. McArthur, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claims of the General Committee of the Brotherhood of
Railroad Signalmen on the former Pennsylvania Railroad
Company:

Claim No. 1:

System Docket 1032
Western Region - Fort Wayne Division Case F-4-74

That on or about April 4, 1974 the Company violated. Article 4,
Section 5, Paragraph (a) and the Scope of our current Agreement between
12:00 Noon and 4:00 P.M. when it allowed C&S Forces not assigned to Seniority
District #20 to come onto Penn Central property that is regularly assigned
Seniority District #20 territory and perform what is commonly considered
signal work.

That the Company pay claimants C&S Foreman C. R. Handy, Signalmen
G. L. Viney and G. L. Silsinger, C&S Helpers A. J. Swisher and R. A. Morter
one hour each at his respective time and one half rate for this loss of work
opportunity, infringement and violation.

Claim No. 2:

System Docket 1033
Western Region - Fort Wayne Division Case F-5-74

That the Company violated the Scope of our current Agreement when
it allowed a private contractor (Wolf Construction of Logansport, Ind.)
to come onto Penn Central property on or about April 4, 1974 at approximately
4 or 5 PM and load onto highway transportation vehicles a number of several
wooden type poles and transport same from Penn Central property. These
poles were located approximately one quarter mile west of Van Tower, which
is located at the west edge of Logansport, Ind. These poles were unloaded
at various times by our C&S forces and were also moved from one location to
another location to accommodate an industry to temporarily locate. This
time they were also moved by our C & S forces.

That claimants, C&S Foreman C. R. Handy, Signalmen G. L. Viney and
G. L. Gilsinger, C&S Helpers A. J. Swisher and R. A. Morter be paid two
hours each, at his respective time and one half rate, for this loss of
overtime opportunity and Scope of our Agreement violation. This time we
claim is comparable to the time that the Wolf Construction Co. for-es spent
on Penn Central property.

OPINION OF BOARD: This claim involves the **work** of loading, transporting and **unloading wooden** telegraph poles and **other** signal **equipment**. The poles and equipment **had** been **originally** unloaded and stacked by Signal Department employes in Seniority District #20 for storage near Carrier's Van Tower at **Logansport**, Indiana. As events developed, however, these poles come ultimately to be used at Xenia, Ohio.

On the afternoon of April 3, 1974 a **number** of tornadoes struck across the Middle and Eastern United States. One of the areas most severely hit **was** Xenia, Ohio. Carrier's operations at that location were interrupted **due** to **damage** and destruction of many facilities. Among other services and **equipment damaged** were signal lines and poles. It was necessary therefore to dispatch to Xenia materials and **equipment** to effectuate repairs. On the afternoon of April 4, 1974 at Carrier's instructions, Signal Department employes **from** outside Seniority District 20 went to **Logansport**, loaded trucks with signal **equipment** and transported **same** to Xenia. Also an outside contractor (Wolf Construction Company) was utilized to load some of the wooden telegraph poles on trucks for transport to Xenia. The **loading** and dispatch of this material occurred **between hours** of **12 Noon** and **5:00 P.M.** on **April 4, 1974**..

Claimants on April 4, 1974 worked from 7:00 A.M. until 5:45 P.M. (**i.e.** including **two** hours at overtime pay) repairing pole lines **damaged** by a tornado at Thornhope, Indiana some 30 miles from **Logansport**. Under **date** of April 13, 1974 the Organization filed a claim that use of the Wolf Construction Company employes to load the poles was a violation of the Signalmen's Scope Rule. By separate letter of **April 14, 1974** a claim was filed **alleging** that use **of** Signal forces other than Seniority District 20 employes to load and transport **material** stored at Logansport, Indiana violated Article IV and the Scope of the Agreement.

Review of the record developed on the property shows that the Organization concurs there was an emergency at Xenia, Ohio on April 4, 1974 due to the **tornadoes** which swept the area and destroyed **signal** communications. -Claimants **argue however**, that the emergency at Thornhope, Indiana had **subsided** by April 4 and therefore they should have been called to **perform** the work of loading and transporting the poles and **equipment** from **Logansport** to Xenia. They base their claim to the **work on** the Scope Rule and **alleged** practice thereunder to assert what **amounts** to a territorial imperative to handle the materials stored **in** the **geographic confines** of their seniority district. Carrier points to the specific Scope Rule in the controlling Agreement plus a whole line of **Awards interpretating** same to support its position that Claimant were not contractually entitled to the **work** even if **arguendo** emergency conditions had not prevailed.

Careful analysis of the record convinces us however that on April 4, 1974 an emergency condition did prevail due to the tornadoes and resultant **destruction** of facilities and **equipment** at Xenia, Ohio. The

causal chain between this **emergency** at Xenia and the loading, transporting and unloading of **poles and equipment from Logansport** to the stricken area is direct, **immediate** and irrefutable. From the record before us we have no doubt that the work complained of at **Logansport** was performed by outside forces and **signal employees from** another district under the **extraordinary** condition of an emergency situation. We have long recognized the principle that a Carrier in an emergency has broader authority in assigning **employees** than under **normal** circumstances. Awards 20527, 19140, 16310, 15219, 14372, 13566, 12299, 9394 **et al.** There was herein proven no abuse of discretion nor bad faith exercise of these emergency powers **by** Carrier. We are constrained by the unassailable authority of these precedents to **deny** the claim. It should be noted that in so doing we find it unnecessary to reach the other **substantive** arguments raised by both parties;

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 not violated.

A W A R D

Claim denied.

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

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of March 1977.