

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22253
Docket Number SG-21939

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Seaboard Coast Line Railroad Company)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad Company:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly **Rule 1** Scope, when it required or permitted General Contractor Johnny **Bramlett** of Chester, S. C., to unload two cars of highway crossing protection signal equipment on June 23, 1975, at Chester, S. C.

(b) Carrier should now be required to compensate Foreman J. O. **Rowes**, Signalmen A. F. Anderson, E. Hodge, M. W. **Cocke** Jr. and A. C. **Swett**, and Assistant Signalmen **K. R.** Lamb, G. P. Flurry, J. W. Giddens, K. E. Williamson, J. S. Anderson and J. S. McPherson, assigned to Signal Construction Gang **#5**, for five hours each at one and one-half times their regular rate of pay."

/General Chairman file: 46-J 0 Bowes Gang-75. Carrier file:
15-1 (75-7) J/

OPINION OF BOARD: On June 23, 1975, Carrier permitted a General Contractor to unload two railroad cars of highway crossing protection signal equipment, and the **Employees** assert that said action constituted a violation of the Scope **Rule**. At Page 5 of its **Ex Parte** Submission, the Organization concedes that the **Rule** "...does not specifically mention work of handling and unloading signal system material..." but it urges that certain cited Awards have determined that such work "...belongs to signalmen."

The Claimants are the **employees** who ultimately performed the construction and installation work on the highway crossing protection system; however, it appears that due to certain re-scheduling of work, the installation was not performed until mid-July and it was necessary to unload the material in June, so as to release the cars.

In any event, Carrier denies that the Scope **Rule** reserves this type of handling of signal material to these Employees.

During the appellate process (on the property), Claimants pointed out that construction and installation of - **among** other things - this type of a protection signal is specifically covered by the Scope **Rule**, but that the term "...other work generally recognized as signal work..." governs this claim because " **...unloading** signal material..." is **signal** work because of "...long years of practice and exclusiveness."

In response, Carrier insists that, in addition to unloading by storehouse workers, "...Maintenance of Way **employees**, Contractors, etc. also unload this material and have done so for many years."

The Employees seem to recognize, by virtue of the language cited above, that (in order to prevail) **it** has a burden of showing an exclusive performance of the duties in question; yet, it relies upon Awards which do not assist us in that regard. For instance, Award 19108 (between these parties) appears to focus upon the "dismantling and loading" of certain equipment, rather than merely "unloading" as was the case here. Moreover, in that Award, the Referee noted that Carrier's defense did not deny the Employees' position, but instead, relied upon an alleged lack of equipment capable of performing the disputed work.

Moreover, we are troubled by the facts of this record as they relate to the distinction recited in Award 5046 (relied upon by the Employees):

" **...work** in connection with the **moving** of materials to be used by signalmen at **some** future 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."

We know that the **material** in question was not used for some weeks after it was unloaded. But, the record is void of an indication of Carrier's plans in this regard when the **material** was initially forwarded to the site.

Our review of the record convinces us that it does not present a sufficient basis for finding a violation, both with reference to the distinction cited in Award 5046 and the question of exclusive performance. Inasmuch as the Organization has the burden of proof, we will dismiss the claim.

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 14th day of December 1978.