

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22295
Docket Number SG-22124

Rolf Valtin, 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 Agreement, as amended particularly Rule I Scope when it required or permitted Assistant Signal Supervisor F. M. Cutts to transport twisted pair (cable) from Rocky Mount, N.C. to MP-145 near **Lucomma** N.C. on Nwember 13, 1975 to be used for temporary repair of Code Line. Mr. Cutts further violated the Agreement when he made test to the Code Line at various locations between Rocky Mount and **Lucomma, N. C.**

(b) Carrier should now be required to compensate Mr. C. H. Brewer for five (5) hours and thirty (30) minutes at his time and one half rate of pay."

General Chairman file: 68-C H Brewer-76. Carrier file:
15-1(76-4) J3/

OPINION OF BOARD: On Nwember 13, 1975, at approximately 10 AM, it was **discovered** that the Carrier's Code Line between Rocky Mount, North Carolina, and Florence, South Carolina, was malfunctioning. The source of the trouble was initially thought to be at Fayetteville, North Carolina (which lies about half way between **Rocky Mount** and Florence). At about noon, becawe checks which had been run at Fayetteville had prwed fruitless, Assistant Supervisor Parker called Assistant Supervisor Cutts to enlist the latter's assistance in locating the source of the trouble. Cutts went to Rocky Mount. When he and Parker determined that the source of the trouble was not at Rocky Mount, they called Supervisor Smith. The **latter's determination** was that the trouble **stemmed** from loss of tone somewhere between Fayetteville and Rocky Mount. Cutts left Rocky Mount with the cable mentioned in the Statement of Claim because it was thought that the trouble might be due to the fact that a temporary **single-strand wire** had been used in connection with repairs attendant on a derailment at **Lucama** about two weeks earlier. **A Signal Maintainer,**

not Cutts, unloaded the cable at **Lucama**. Though the cable was subsequently installed in replacement of the temporary single-strand wire, it was discovered **that** the presence of the temporary single-strand **wire** at the **Lucama** site was not the **source** of the Code Line trouble.

Having found this to be so, Cutts proceeded in **one** direction **and** instructed a **Signal** Maintainer to proceed in the opposite direction for the purpose of locating the source of the trouble. Cutts used a digital-frequency meter, neither using **any** other tools nor opening the line **at any point**. **He** discovered the source of the trouble at the **Micro** defect detector. The damage had been caused by **lightning** during a thunder storm **on** the previous night. The repair work was done by a Signal Maintainer.

In **connection** with both the identification and the repair of the trouble, all six of the Signal Maintainers assigned at the Fayetteville-Rocky Mount maintenance territory either were already at work or were called. The claimant is a Signal Maintainer from **Enfield**, which lies to the north of Rocky Mount.

The Organization is **claiming** a violation of the Scope Rule -- relying particularly on those portions of the Rule which refer to "construction, installation, inspecting, testing, maintenance and repair" and which provide that "No **employee** other than those classified herein **will** be required or permitted to perform any of the work covered by the scope of this agreement". The Carrier broadly denies a violation of the Scope Rule both with respect to the cable transporting and the line checking done by the Assistant Supervisor.

We **are** deciding **the** case narrowly, confining ourselves to the particular facts and circumstances of the case and seeking to minimize the establishment of precedent. Already in existence with respect to the Scope **Rule** under the Signalmen's Agreement **are** a series of Awards drawing various distinctions leading to various results. We need **to** dispose of the case, but we see no need to expand on the various criteria.

The cable-transporting element of the case is determinable on the basis of the previously-established distinction between the **immediate** and the subsequent use of materials transported by a supervisor. Given the fact that Cutts obviously brought the cable along because he thought it would be needed to cure the Code Line trouble, the application of the distinction in the present case seems artificial. But, in the given circumstances, it would also have been

the height of artificiality for him not to bring the cable along. And to be borne in **mind** is that **Cutts** refrained from unloading the cable. We are thus holding that the cable transporting by the Assistant Supervisor in this instance did not violate the Agreement.

With respect to the line-checking **element** of the case, we are presented with a conflict between two fundamental considerations. **On** the one hand, the checking on the proper functioning of equipment is simply an inherent part of a **supervisor's** role. It is thus, indeed, that **many** an **assignment** by a supervisor to a bargaining-unit **employee** is formed. And it should be obvious that the use of a **digital-frequency** meter by a supervisor in connection with such checking cannot properly be proscribed. **On** the other hand, physical diagnostic work is plainly preserved as bargaining-at work. Moreover, the Signalmen's Agreement contains the unusually strong **command** that no **non-bargaining-unit** person "will be . . . **permitted** to perform any of the work covered by the scope of this agreement".

The parties' respective positions echo these broad considerations. **We** think that we are presented with a borderline situation and that the case's particular **circumstances** should govern its **outcome**. We are ruling in favor of the Carrier on the bases that there had been difficulties in locating the source of the Code Line trouble; that there was an urgent need to locate and **overcome** the trouble; and that all the Signal Maintainers from **the** maintenance territory were at work.

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.

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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *G.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of January **1979**.

