

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23875  
Docket Number **SG-23313**

George E. **Larney**, Referee

**PARTIES TO DISPUTE:** (**Brotherhood** of Railroad Signalmen  
(  
(Monongahela Railway Company

**STATEMENT OF CLAIM:** "Claim of the General **Committee** of the Brotherhood of Railroad Signalmen on The Monongahela Railway **Company**:

Allow **J. P. Kinosh, 35778**, Signal Mechanic, and **J. W. Wardman, 37157**, **Leading** Signal Mechanic, **seven** (7) hours at the punitive rate, **5:00 p.m. to 12:01 a.m.**, account of contractor's light plant used on company property for derailment at White Cottage, **10-27-78**. (S-1-79) (M-3399)

Allow **J. C. Thomas, 36038**, Signal Mechanic, and **E. R. Nestl, 34684**, Assistant Signal Mechanic, **seven** (7) hours at the punitive rate, **5:00 p.m. to 12:01 a.m.**, account of contractor's light plant used on company property for derailment at White Cottage, **10-28-78**. (S-1-79) (M-3399)"

**OPINION OF BOARD:** As a result of a derailment which occurred in the vicinity of White Cottage Passing **Siding** on the **Waynesburg** Southern Extension, Carrier, early on the **morning** of October **27, 1978**, decided to undertake continuous wrecking operations so as to open the right-of-way for other **movements**. As part of its decision, Carrier determined this undertaking required using a portable emergency flood lighting system **more** modern and efficient than the one it **owned**. Accordingly, Carrier contacted the local contracting firm of Solomon and Teslwich and **made** arrangements to use their equipment which **consisted** of the following components: four (4) **1,000-watt** multi-vapor lamps **powered** by a **12** horsepower air-cooled diesel engine with a **43-hour** fuel supply and an automatic low oil pressure shut-off. Such equipment, Carrier notes, is capable of lighting approximately 7.4 acres of ground and does not require any maintenance shut-downs **during** operation. **In** comparison, Carrier notes its own equipment constructed by **employees** of the Signalmen Craft, consists of three (3) portable **500-watt incandescent** lights and two (2) stationary **400-watt** mercury vapor lights powered by a **3,000-watt** alternator with a fuel capacity of approximately three (3) gallons of gasoline, requiring **periodic** shut-downs for checking fuel and oil.

Evidence of record indicates the Contractor delivered the portable lighting apparatus prior to the onset of darkness at the prescribed location, that said lighting system was positioned using Carrier's construction equipment, and was set up for operation by two employees of the contracting firm. The lighting system was **used** by the Carrier in its wrecking operations between the hours of **8:00 p.m.** to mid-night on October **27, 1978** and again between the hours of **8:00 p.m.** and **11:30 p.m.** on October **28, 1978**, at which time wrecking **operations** were completed. The record evidence further indicates the lighting **system** was activated and shut down by **two** (2) Carrier officers who accomplished this task by flipping a switch and pushing buttons.

The **Organization** submits the duties of operating the portable lighting equipment belong to employees of its Craft by way of contract language relative to the "scope" provision contained **in** the Controlling Agreement bearing effective date of July 24, **1978**, as well as through past practice, based on its assertion such work has always been performed exclusively by Signalmen covered under the Controlling Agreement. In support of its position, the **Organization** cites in relevant part the following language relative to its scope of work:

"This agreement governs the rates of pay, hours of service and working conditions of all employees in the signal department (except supervisory forces above the rank of inspector) performing the work of constructing, installing, **maintaining, repairing,** inspecting and testing, either **in** the signal shop or in the field, any and all signal systems, traffic control systems, train order signals, interlocking plants, highway crossing warning devices, electric switch lamps, hot box detectors, dragging equipment detectors, switch heaters, spring switch mechanisms, signal pole lines, **communication** systems, including all apparatus **and devices** **in** connection therewith, **and all other work, which has been recognized as signal work** by Signal Department. The following classifications include all the employees of the Signal **Department** performing the **work** referred to under the heading of 'Scope'.

**NOTE:** In rewriting the Scope Rule, it is the intent of the parties to the agreement to **preserve** to the employees covered thereby the performance of **work** which traditionally and regularly has been **performed by Monongahela** Railway Company signal employees." (Emphasis by the Organization)

The **Organization maintains** that during the handling of this instant claim on the property, Carrier did not confront its scope of work **argument** but instead attempted to excuse the violation by referring to the **improved** technology in portable lighting equipment and to the distinction between such equipment being leased as opposed to being owned. The Organization argues technological advancements here are of no consequence as such innovations do not have the force of **removing** work reserved to employees of its Craft from the Scope Rule of the Controlling Agreement. In support of its position on this point, the Organization cites **Third Division Award No. 20540**, which involved the use of a **machine**, instead of a shovel, wherein the Board held that the hands on the controls **of** a machine produce the same results as hands **on** a shovel would have produced. The Organization further argues that equipment ownership does not justify Carrier's decision to contract-out work covered by its Scope Rule. The Organization submits, Carrier is contractually obligated under the Scope Rule in **conjunction** with Agreement Rule 705 to assign work to signal forces reserved unto them by the scope of work language and to furnish whatever tools and **equipment** they may need to perform said **work**.

Carrier argues technological innovations in portable lighting apparatus is key to the subject dispute as such advancements have eliminated the functions of signal forces reserved to them by their Scope Rule, relative

to ~~maintaining~~ the lighting systems when used. Carrier maintains the newer lighting systems do not require the services of stand-by employees to fuel and oil engines **and** generators as well as to string out and constantly move electrical lines **and lights and make numerous** connections. Carrier notes, however, that **in** view of its **commitment** to the Organization made during collective bargaining negotiations **in 1977**, to wit, that whenever portable flood lights **owned** by it were used at wreck scenes, such equipment would continue to be handled by Signalmen, it reaffirms its position that **in** those situations where such obsolete lighting equipment must be utilized, Signal Department employees will be used to perform the necessary tasks required. Carrier forcefully argues however that this **commitment** does not in any way preclude its renting portable **lighting** equipment **more** adequate and efficient than its **own equipment** to light remote derailment sites and that **when** such rental equipment is used, it is not contractually obligated to use Signalmen to engage in the **incidental** work of flipping switches and pushing buttons to activate and shut down such rental equipment.

As to the Organization's assertion the disputed work has historically and exclusively been performed by employees of its Craft, Carrier refutes this position by identifying five (5) instances, two (2) prior and three (3) post the subject case, in which it has **used** rental lighting equipment at derailment sites and where it has not utilized the services of signal forces to maintain the equipment, noting that **in said** instances, no claims were filed nor challenges raised by the Organization.

**Upon** reflection of all the evidence before us, it is our determination the Organization failed in meeting its burden of proof relative to overcoming the arg-ts advanced by the Carrier, especially vis-a-vis, the claim of exclusivity of work as being applicable when rental lighting **equipment** is used at derailment sites. Accordingly, **we** find we must deny the instant claim.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and **upon** the whole record and all the evidence, finds **and** holds:

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

BY Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May, 1932.

