

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25294

Docket Number SG-25056

George S. Roukis, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen OR the Burlington Northern Railroad:

(A) Carrier violated the Signalmen's Agreement, particularly the Scope, when, on February 27, 1982, carrier officer L. G. Gilbert performed recognized signal work when he transported signal material in company truck to East Fisher River, Montana.

(B) Carrier should pay to Signal Foreman, D. S. Lewis, fixed crew 332, Spokane, Washington, time equal to (8) hours at the Signal Foreman time and one half rate because of the loss of work opportunity and/or as a consequence of the violation. [General Chairman file: SP-82-271. Carrier File: SI 82-5-7B]

OPINION OF BOARD: The basic issue in this dispute is whether Carrier violated the Scope Rule of the Signalmen's Agreement when a non-Agreement employe on February 27, 1982, transported signal material in a Company truck to East River Fisher, Montana. On the date aforesaid, Communication and Signal Supervisor L. G. Gilbert was required to drive to East River Fisher, Montana from Spokane, Washington to monitor one of his signal crews working at a derailment situs. The Signal Crew Foreman at the derailment location apprised Supervisor Gilbert of the need for additional insulated rail joints, a power plant and a jackhammer; and this equipment was placed on Supervisor Gilbert's Company owned truck by Claimant's crew at Spokane. The equipment was transported by Supervisor Gilbert to the derailment site, a distance of about 175 miles, and then unloaded and used by the Signal Crew working at that point.

In response to this situation, the Local Chairman initiated a claim on March 25, 1982, wherein he asserted the Signalmen's Scope Rule was violated when Supervisor L. G. Gilbert performed recognized signal work when he transported signal material in a Company truck to East River Fisher, Montana. The claim was denied by Carrier.

In defense of its petition, the Organization argues that Carrier's failure to refute or contest the Local Chairman's assertion that the material was for immediate use is an implicit acknowledgement that the Scope Rule was violated. Moreover, it contends that decisional holdings of the Board fully support its position that the work of handling signal material, notwithstanding lack of articulation in the Scope Rule, accrues to Signalmen. In particular, it maintains that Third Division Award No. 5046 is on point with its position, since it held that work in connection with the movement of signal materials from a warehouse or material yard to a signal construction or maintenance job for immediate use is exclusively Signalmen's work. It also cited several other Awards involving Signalmen Scope Rules that did not specifically mention the handling of signal material. (See Third Division Award Nos. 16783, 20873, 13938 and 11437.)

Carrier asserts that the Organization failed to prove that the Scope Rule specifically reserves this right to the Signalmen. It argues that the handling of material has never been exclusively performed by any one group or class of **employees** on its property and contends that numerous Third Division Awards affirm its position that absence a showing of system-wide exclusivity or explicit Agreement language, a claim must fail for want of substantiation. It cited Third Division Award Nos. 13347, 10613, 11431, among others as controlling authority.

In our review of this case, ~~we concur with Carrier~~ that the disputed ~~work~~ did not accrue exclusively to the Signalmen. ~~In effect~~, we do not find that the Scope Rule requires Carrier to send a Craft truck to deliver signal materials or that transporting or delivery is work generally recognized as signal work. In the instant case, we note that Agreement covered **employees**, not Supervisor L. G. Gilbert, loaded and unloaded the equipment at the points of origin and destination, and to that extent handled signal materials. Under these circumstances, and consistent with our prior rulings, we cannot conclude that the Scope Rule was violated when Supervisor Gilbert merely drove the vehicle.

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

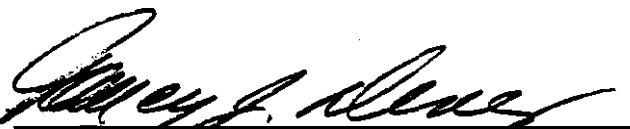
That the **Agreement** was not violated.

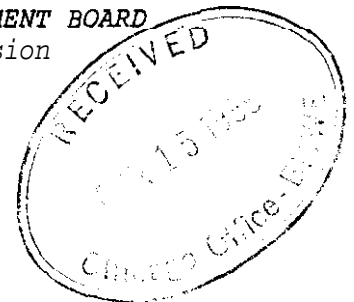
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST


Nancy J. Dever - Executive Secretary



Dated at Chicago, Illinois, this 28th day of February 1985.