

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25542
Docket Number **SG-25633**

Stanley L. Aiyes, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen **on** the Missouri Pacific Railroad Company that:

(a) Carrier violated the May 1, 1964 Signalmen's Agreement, as amended, particularly the Scope Rule, when on January 4, 5 and 6, 1983, it permitted a person not covered by **said** Agreement--an employee of (Vaught's Construction Co.) to perform signal work at Mile Post 421, Self, Arkansas, consisting of digging foundation holes and trenching for underground track wires in connection with installation of a Hot **Box** Detector.

(b) Carrier should now be required to compensate D. M. Swindall time equal to what was worked by the employee of Vaught's Construction Company -- eight (8) hours each date January 4, and 5, and four (4) hours January 6, 1983, total of twenty (20) hours at claimants overtime rate, **as** consequence of the violation and/or loss of work opportunity. [General Chairman file: 83-5-UL. Carrier file: B-225-9461

OPINION OF BOARD: This claim alleges a violation of the Scope Rule of the Ayreement occurred on January 3, 4 and 5, 1983, when Carrier permitted **an** employee of Vaught's Construction Company to dig foundation holes in connection with the installation of a hot box detector at Mile Post 421, Self, Arkansas. Claimant was a member of a signal yang assigned the task of installing the hot box detector. The **ground** at the location was composed of ledgestone. Heavy machinery was required to break the stone in order to permit the installation to proceed. **Vaught** Construction Company, which was on the site performing other work, had the heavy equipment needed to prepare the **ground**. It was employed to dig the hole for the hot box detector foundation and a trench for power cables. The thrust of the dispute here is that Claimant was exclusively entitled to that work under the **Scope** Rule of the Ayreement. (It is undisputed that Claimant was under pay at all times involved.)

This Division has frequently held that to merit a sustaining award in a Scope Rule dispute, the Organization bears the burden of establishing its entitlement to the disputed work **on** the basis of specific provisions of the Agreement, **or** on the basis of exclusive system-wide practice. See Third Division Award Nos. 25396; 25177; 25136; 24853; 23211; and 21898. An analysis of the Scope Rule involved here reveals that the task of digging of holes is not specifically enumerated. In fact, various Awards of this Division have considered that specific question. All have found that such work is not specifically **or** necessarily covered by such 'general' Signalman Scope Rule phrases as "**installation**" or "**maintenance.**" Third Division Award Nos. 17960; 19450; 20336; 20465; 20709. Thus, the claim cannot be sustained on the basis of entitlement due to clear contract language.

Nor is there sufficient evidence to support the Organization's position on the basis of past practice. Signalmen may well have dug holes at sites such as the one in question. But they have not done so exclusively. The record reflects that such work has often been contracted **out** in the past where it is impractical to perform digging by hand with shovels.

The Organization, in short, has failed to meet its burden of proof of exclusive jurisdiction over the disputed work. The claim, accordingly, must be denied.

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

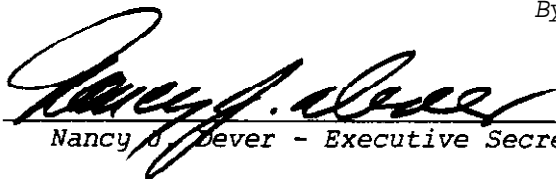
That the Agreement was not violated.

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 26th day of July 1985.