

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25933
Docket Number SG-25399

M. David Vaughn, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Illinois Central Gulf Railroad

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Gulf Railroad:

"On behalf of Signalman R. W. Pruitt, Division Signal Gang 4306, account Machine Operator C. D. Childress working with Signal Gang 4306 on various types of work July 19 through September 10, 1982 (specific dates and work listed in initial claim letter of September 13, 1982), for 280 hours at the straight time rate of pay, in addition to his regular wages for the period in question." [Carrier file: 135-137-81 Spl 135-138 135-138 Case No. 407 Sig.]

OPINION OF BOARD: During the period July 19 through September 10, 1982, the Carrier assigned a Maintenance of Way Machine Operator not holding seniority under the applicable Agreement between the Carrier and the Organization to work with Signal Gang 4306. The Machine Operator performed four types of work which the Organization challenges: clearing a path for trenching cable, clearing brush under pole lines, unloading rock for a signal building with a crane, and transporting signal material.

The Scope Rule reads, in relevant part:

"This Agreement governs the ... working conditions of all employees in the Signal Department ... performing work generally recognized as signal work, which work shall include the ... maintenance ... in the field, of the following:

(b) ... poles ... wires and fixtures, pertaining thereto ... inside and outside wires or cables for signal and interlocking purposes.

(e) ... excavating and back filling work, including the operation of machines, used in connection with ... maintaining any system or equipment covered by this agreement,...

* * *

(h) No employee or person other than those covered by this agreement shall be permitted or required to perform any work covered by this agreement."

The Organization contends that Rule 1 (b) and (e) describe the work performed by the Machine Operator and that Rule 1 (h) reserves the work exclusively to the Signal craft.

The record indicates that clearing brush from the Carrier's right-of-way, clearing trenches for cable, unloading rock, and transporting materials is all work which has been performed by the Maintenance of Way and other crafts and/or by outside contractors. However, the Organization contends that the jurisdiction of particular work must be defined by its purpose and, since the work in question was for the purpose of maintenance of signal systems, the work belongs exclusively to the Signal craft.

The Carrier points out that the specific work in question is not covered by the applicable Scope Rule. The Rule does not specifically refer to clearing paths for trenching cable, clearing brush under pole lines, unloading rock, or transporting signal material, nor does the Rule specifically name the machines used to perform the work in question.

The Carrier argues that, where a Scope Rule does not specifically cover work, it is the burden of the Organization to show that its members have historically and exclusively performed the work in question on a systemwide basis. The Carrier asserts that, since one or more other crafts, including the Maintenance of Way craft, as well as outside contractors, have also performed the work in question, its use of the Machine Operator to perform the work did not violate the Scope Rule.

The Carrier also asserts that the record does not support the Organization's assertion that the primary purpose of the work was signal maintenance. It contends, therefore, that the Organization's argument based on that assertion must fall.

The question for determination by the Board is whether the work falls within the Scope Rule. If it falls within the express language of the Rule, then the work belongs to the Signal craft. If the work is not specifically identified, then the work cannot be deemed to belong exclusively to the Signal craft unless the Organization demonstrates entitlement to the work based on its exclusive performance of the work on a systemwide basis in the past. In Third Division Award 11526 this Board held:

"It is a well-established principle of this Division, that where there is no express reference to the work in the Scope Rule, that the intent of the parties can be only ascertained by past practice, custom and usage on the property."

In the instant case, the Rule does not, by its terms, specifically identify the work in question or the equipment used as within the exclusive jurisdiction of the Signal craft. The record indicates that other crafts, primarily Maintenance of Way employees cut brush, cleared the right-of-way for trenching and other purposes, transported signal material, and unloaded rock. Indeed, the Organization specifically sought in prior negotiations the authority to transport signal material but was not successful. With respect to the use of equipment to unload rock, the general language of the Agreement, which covers operations of machines, refers to excavating and back filling work, not the use of rip rap to prevent right of way erosion, even around signal equipment.

In Third Division Award 24163, involving the same parties and substantially the same issue as the instant case with respect to the work of clearing brush, the Board concluded:

"The Organization failed to prove that the [disputed work in question, there clearing brush] was performed exclusively (or even primarily) to maintain signal lines.

Having failed to prove that the disputed work in specifically covered under the Scope Rule, the Organization must show that the work has traditionally been performed by Signalmen."

Since the record in that case failed to demonstrate the necessary exclusivity, the Board denied the Organization's claim.

The Board concludes that since the work at issue in the instant case is likewise not specifically named in the Scope Rule and had not historically been exclusively performed by the Signal craft, the Carrier's use of a Maintenance of Way Machine Operator to perform the work did not violate the Scope Rule of the applicable Agreement.

Accordingly, the Claim must be denied.

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 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

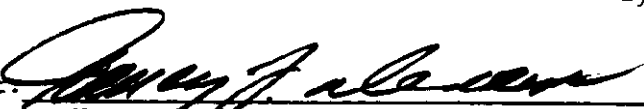
That the Agreement was not violated.

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 February 1986.