

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the St. Louis Southwestern Railway Company (SSW):

On behalf of the two senior members of Signal Gang No. 28, for eight hours pay at their respective pro rata rate of pay and four hours pay at their respective overtime rate of pay account of the Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when on Tuesday, October 22, 1985, it used or permitted Track Forces (Maintenance of Way Employees) to remove and reset a Style 'a' Flasher Signal at the Rail highway crossing at Highway 62 in St. Francis, MO." Carrier File 91-82.

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

As Third Party in Interest, The Brotherhood of Maintenance of Way Employees was advised of the pendency of this dispute, but chose not to file a Submission with the Division.

On November 18, 1985 a claim was filed by the General Chairman with the Regional Signal Manager at Pine Bluff, Arkansas on grounds that Maintenance of Way forces had done work covered under the Scope Rule of the Signalmen's Agreement on October 22, 1985. The incident allegedly occurred when track forces assisted a Signal Maintainer remove and replace a Style A Flasher near Milepost 70 at St. Francis, Missouri.

The evidence of record shows that a boom truck was used by Maintenance of Way forces to remove and reset the flashing light signal. All

of the wiring was disconnected and reconnected, and the signal was tested by a Signalman. The flashing light signal was removed while the B&B forces were reconstructing a railroad highway grade crossing and was replaced when they finished. The Carrier argues that the boom truck work was not exclusively reserved for Signalmen and that all work which did come under the purview of their Scope Rule was done by the Signal Maintainer.

A study of the record does not produce sufficient evidence of probative value to warrant the conclusion that the Signalmen's Scope Rule was violated in the instant case. The General Chairman argues that the mere removal of wiring from the flasher "...does not remove its designation as a 'highway crossing protection device...'" which is protected work under the Scope Rule of the Agreement. Without ruling on whether the work on such devices belongs to this craft, the Board must conclude that the work involved in the instant case was of such minimal amount that it reasonably falls under the de minimus doctrine as criterion for any arbitral conclusion in this case. In this respect the Board cites the language from Second Division Award 8360 which equally applies here:


"...(the work must be) considered incidental and de minimus. To hold otherwise, we believe, would seriously and unduly hamper the efficiency of the operations of the Carrier, without providing any meaningful or necessary protections to the highly significant and legitimate duties which are, and will remain, the exclusive province of (this) craft..."

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deva - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.