

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(Houston Belt and Terminal Railway Company)

STATEMENT OF CLAIM: "Claim on behalf the General Committee of the Brotherhood of Railroad Signalmen on the Houston Belt and Terminal Railway Company (HBT):

Claim on behalf of K. R. Zumwalt, for payment of 43 hours of pay at his punitive rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope Rule, when it allowed or permitted an individual not covered by the Agreement to perform covered work on August 26, 27, 28 and 29, 1989." G.C. File 89-50-H-S. BRS file Case No. 8043-HB&T.

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 employees 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.

The Claimant in this dispute is a Reliefman-Technician, headquartered at the Carrier's Union Station, in Houston, Texas. On August 23, 1989, the Houston area was hit by severe thunderstorms, which resulted in the Carrier's computerized signal system being knocked out by lightening. The entire Houston Terminal was without signals and train operations were hampered due to the signal system being inoperative. The Signal Department utilized every Signal Maintainer and Technician in an effort to restore the computer and signal system.

The Carrier's signalmen made every reasonable effort to restore the system, but after three days Carrier declared an emergency with the FRA to allow the employees to surpass the time provided by the Hours of Service Law. The FRA granted the Carrier such relief for August 25, 1989, to locate and repair the signal problem. The efforts of the Carrier personnel were unsuccessful in restoring the system and on the fourth day, August 26, the Union Pacific (UP), part owner of the Carrier, volunteered the services of one of its technicians and a supervisor.

The Carrier accepted Union Pacific's offer and began to utilize the services of these two individuals, as well as the services of a manufacturer's representative from Harmon Industries. These individuals worked for another four days along side the Carrier's Signalmen, conducting extensive testing on the electronic circuits and boards. On the seventh day the problem was finally located and repaired. The trains began operating on signal indication and the emergency conditions were resolved.

On October 16, 1989, the Organization filed the instant claim based upon the Carrier's use of the Union Pacific Technician who assisted on the dates of August 26, 27, 28 and 29. The Organization requested payment for overtime for the Reliefman-Technician on those four days, alleging that the UP employee was performing work that is exclusively reserved to the Claimant. Additionally, the Organization contended that the Carrier did not provide the Claimant with the equipment necessary to repair the circuit boards. The Carrier denied the claim asserting that an emergency existed. The Carrier also asserted that the Claimant was on duty and under pay on the claim dates.

There is no room for reasonable debate that, all things being equal, the work performed by the outsider is work reserved expressly for performance by Agreement-covered employees under the Scope Rule.

#### "SCOPE

This Agreement governs the rates of pay, hours of service and working conditions of all signal employees engaged in the installation, maintenance, repair, testing, inspection, designing and drafting in the shop, office or in the field of the following:

Signals and signaling systems, cab signal, test equipment, CTC, train stop and train control devices, track occupancy indicators, interlocking plants and systems, car retarder systems, highway crossing protection devices and systems, switching equipment, T. O. signals and devices, bonding of track in connection with these systems, digging, trenching, back filling in connection with the work covered herein except the operation of rental equipment used for such purposes; this includes the pipe lines, poles, wires, cables, storage batteries and chargers, power plants, incidental carpenter, painting, concrete and form work in connection with these systems and devices and the erection and maintenance of cantilever and signal bridges and signals, and all other work generally recognized as signal work pursuant to the standards and practices adopted by the Signal Department in signal shop or field.

In the event other circuits or systems are superimposed on existing signal systems, this will cover the other circuit or system from the point entering until leaving existing signal department system, if signal circuits or systems are superimposed on existing systems of another craft this will cover the signal system only to the point entering and again after leaving the system of the other craft. When the sole purpose of a new facility installed is the operation and control of the above systems and devices, it will be included in this agreement. When a new facility installed serves a combination purpose, Carrier will meet with the General Chairman of the interested parties to reach an agreement covering distribution of the work involved. This will not restrict Carrier's present practice of using pre-cast concrete bases. Officials of Carrier's Signal Department may participate in drafting and designing.

Employees covered by this agreement will not perform work of any other craft, except in an emergency. An employee of any other craft will not be required to perform work coming within the Scope of this Agreement except in an emergency. Emergencies are conditions such as those arising from floods, wrecks, storms or other conditions which may arise that would threaten the continuous operation of the railway."

However, the last paragraph of that Rule is also perfectly clear and the "emergency" exception manifestly applied in the circumstances presented in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1992.