

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31642
Docket No. SG-31485
96-3-93-3-482**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

"Claims on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (CONRAIL):

CASE No. 1

Claim on behalf of J.F. Stoner for payment of one-half hour at the straight time rate for each day worked beginning April 10, 1992, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized a management employee to perform the covered work of handling time reports and deprived the Claimant of the opportunity to perform this work.

CASE No. 2

Claim on behalf of R.S. Rock for payment of one-half at the straight time rate for each day worked beginning April 15, 1992, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized a management employee to perform the covered work of handling time reports and deprived the Claimant of the opportunity to perform this work.

Carrier's File Nos. SG-499 and SG-501. General Chairman's File Nos. RM2343-105-992 and RM2348-26-992. BRS File Case No. 9137-CR."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee 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.

This claim involves a contention by the Organization that Carrier allegedly removed the performance of certain time keeping work from the Signalmen's class and assigned such work to a management employee. The Organization alternately referred to "management employees" and "supervisory employees" as the group which they say performed the disputed work. Actually, the work in question was performed by agreement-covered supervisors who are represented by the United Railway Supervisors Association (URSA). The URSA represents employees in the classes of subordinate officials known as Supervisor, Assistant Supervisor and General Foreman. Because of the involvement of these two classes of union-represented employees, the Board gave notice of the pending dispute to URSA and offered them the opportunity to be heard in this matter. The URSA presented an ex-parte Submission to the Board in which it outlined its position relative to the dispute.

The situation which formed the basis of the dispute concerns the work of reviewing, verifying and transmitting daily time and work reports which are submitted daily by employees of the Signal Department. The Organization contended that the receipt, approval and transmittal of daily time and work report information from employees of the Signal Department has, by past practice, been performed by Signal Inspectors. Therefore, they argued that such work is reserved to the Signalmen's craft by the provisions of their Scope Rule and the performance of such work by other than BRS-represented employees constituted a violation of that Scope Rule.

The case record shows that, beginning in April, 1992, Carrier initiated an additional level of oversight and review of daily time and work reports by utilizing an Assistant Supervisor (URSA) to verify the accuracy of time and work reports, sign the time reports and transmit such reports via fax machine to the appropriate payroll department. Immediately prior to April 1992, the case record shows that such daily time and work reports were received from the individual employees by the Signal Inspector (BRS) and were signed and forwarded to the payroll department by the Signal Inspector. Since April 1992, the Signal Inspector continues to receive the daily time and work reports which are reviewed, verified and forwarded to the URSA supervisor.

The Signalmen's Scope Rule here in dispute reads, in pertinent part, as follows:

"SCOPE

These rules shall constitute an agreement between the Consolidated Rail Corporation and its employees, represented by the Brotherhood of Railroad Signalmen, covering rates of pay, hours of service and working conditions of employees in the classifications hereinafter listed who are engaged, in the signal shop or in the field, in the construction, installation, repair, inspection, testing, maintenance or removal of the following signal equipment and control systems, including component parts, appurtenances and power supplies (including motor generator sets) used in connection with the systems covered by this Agreement and all other work recognized as signal work:

* * * * *

It is understood and agreed in the application of this Scope that any work specified herein which is being performed on the property of any former component railroad by employees other than those represented by the Brotherhood of Railroad Signalmen may continue to be performed by such other employees at the location at which such work was performed by past practice or agreement on the effective date of this Agreement; and it is also understood that work not included within this Scope which is being performed on the property of any former component railroad by employees represented by the Brotherhood of Railroad Signalmen will not be removed from such employees at the location at which such work was performed by past practice or agreement on the effective date of this Agreement."

This Scope rule became effective September 1, 1981.

The URSA Scope rule reads as follows:

"RULE 1 - SCOPE

The provisions set forth in this Agreement shall constitute an Agreement between the Consolidated Rail Corporation and its subordinate officials, represented by the United Railway Supervisors Association and shall govern the hours of service, working conditions and rates of pay of the respective positions and employees classified herein.

(a) These rules apply to the following classes of subordinate officials:

Track Department

- Class 1. a. Supervisor Track
 - b. Assistant Supervisor
 - c. General Foreman
- Class 2. a. Supervisor Welding
 - b. Assistant Supervisor
 - c. General Foreman
- Class 3. a. Supervisor Work Equipment
 - b. Assistant Supervisor
 - c. General Foreman

Structures Department

- Class 1. a. Supervisor Structures
 - b. Assistant Supervisor
 - c. General Foreman

Communication and Signal Department

- Class 1. a. Supervisor C&S
 - b. Assistant Supervisor
 - c. General Foreman
 - d. Communication Line Foreman *
- Class 2. a. Supervisor Signal Construction
 - b. Assistant Supervisor Signal Construction
 - c. General Foreman

* Subject to resolution of cross-representation.

(b) The term 'supervisor' or 'supervisors' as used in this agreement means an employee or employees covered by the Scope of this agreement.

(c) Where supervisors are assigned, they will have primary responsibility for the supervision of employees working under their jurisdiction in the Track, Structures, Communication or Signal Departments.

(d) Established supervisor positions will not be discontinued and new ones created under a different title covering work of similar character and responsibility for the purpose of reducing the rate of pay or evading the application of these rules."

The Organization in support of its position has advanced the argument that this Scope Rule reserves to Signalmen work which may not be specifically included by reference within the Rule but which was performed by a past practice at a particular location on a former component property on the effective date of the Agreement. They insist that, in the past, the function of receiving, approving and forwarding of daily time and work reports from signalmen was a work item which was performed by the Signal Inspector. They argue that the use of an employee other than the Signal Inspector from another class of employees to perform work of this nature violates the preservation provisions of the Signalmen's Scope rule.

The United Railway Supervisors Association expressed the opinion that inasmuch as Supervisors are required to be responsible for and to verify the accuracy of time reports submitted for work performed by subordinate employees under their supervision, the work here in dispute is, in fact, work which properly accrues to Supervisors under the language of the URSA Scope rule, specifically paragraph © thereof.

The Carrier's position in this case consists primarily of the contention that the disputed work is supervisory in nature and was properly performed by Supervisors. They further argue that the Signalmen's Scope Rule is general in nature, and, therefore, the Organization must show a system-wide past practice in order to lay claim to work not specifically mentioned in the rule. Additionally, Carrier contends that the Signalmen's Organization has failed to present any evidence to prove that the work here in question was, in fact, performed by Signalmen prior to or on the effective date of the revised Scope rule which contains the "savings" feature here involved.

From the Board's review of the case record and after studying the evidence and the Scope Rule here involved, the Board cannot agree with the Carrier's position that the Organization must prove system-wide exclusivity of performance in order to prevail. The language of this Scope Rule which became effective on September 1, 1981, clearly recognizes that there may have been items of work at certain locations on the former separate properties which were not specifically covered by the Scope Rule, but which were, by practice, performed by the employees then covered by the Scope Rule. If they did such work at one location prior to the effective date of the new Scope rule then that work continued to be theirs at that location after the effective date of the new Scope rule. The very nature of this agreed-upon rule provision mitigates against the need to prove a "system wide" practice as espoused by Carrier in this instance. Carrier's position in this regard is rejected.

The Board is not convinced, however, from the record in this case that the work here in dispute was, in fact, performed by Signal Inspectors at the locations in question on the effective date of the revised Scope Rule. As the moving party in the dispute, the Signalmen's Organization has the responsibility of proving by probative evidence all aspects of the claim which it initiates. In this situation, that includes proof that the disputed work was, in fact, performed by Signalmen on the date that the revised Scope rule became effective. Such proof is not found in this case record. The fact that BRS-represented employees may have performed such work in one form or another immediately prior to the claim period here in question does not, ipso facto, reserve such work to Signalmen under the specific language of the 1981 revision of the Scope Rule which limited to and saved for Signalmen the items of work which they were performing on the effective date of the Agreement.

As for the actual work here involved, the evidence of record shows that the Signal Inspector receives the time and work information daily from the employees and records it on the daily time reports. The time reports are then given to the Supervisor who reviews them, verifies the time and work information, signs the reports and transmits them to the timekeeper. This type of activity is supervisory in nature and in the Board's opinion is properly performed by the URSA-represented employee. There is no proof in this case that any work which properly accrues to Signalmen under their Scope Rule has been removed therefrom. Therefore, the claim as presented is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 29th day of August 1996.