

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31969
Docket No. SG-32226
97-3-95-3-33**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Chicago and North Western Transportation Company**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago & North Western Transportation Co. (CNW):

Claim on behalf of R. Stipek, P. D. Sclafani and C. E. Haynes for payment of 12.5 hours each at the straight time rate, and on behalf of D. P. Pantaleo Jr. for payment of 4.5 hours at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it utilized other than employees covered by the Signalmen's Agreement to perform the covered work of constructing the foundation for supporting a signal case on November 23 and 24, 1993, at Mile Post 43.43 on the Harvard Subdivision, and deprived the Claimants of the opportunity to perform this work. Carrier's File No. 79-94-10. General Chairman's File No. S-AV-196. BRS File Case No. 9545-CNW."

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 and 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 were given due notice of hearing thereon.

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

On November 23 and 24, 1993, Maintenance of Way employees in the Carrier's Structures Department constructed a berm and retaining wall on the Harvard Subdivision at Mile Post 43.43. The Organization asserts that the construction was put in place to hold the ground fill which supported a signal foundation and associated appurtenances and was therefore work covered by the Organization's Agreement. The Carrier asserts that the work completed by the Maintenance of Way employees was to keep the ballast from sliding away from the track in the area of the switch blowers and signal case and was properly assigned to the Maintenance of Way employees. Signal Department employees previously installed the signal foundation directly supporting the associated appurtenances (signal relay cases).

Citing its Scope Rule ("... construction ... of signals or signal systems with all appurtenances on or along the railway tracks ... as follows: ... [i]nstalling foundations directly supporting signals or associated appurtenances"), the Organization claims the work. The Organization's Scope Rule, however, does not clearly support the Organization's claim to assignment of this kind of construction. While it is certainly arguable this kind of construction falls under the Organization's Scope Rule, there is no specific mention of this particular construction in that Rule. To that extent, we do not find the Organization's Scope Rule has specifically reserved the disputed construction work to Signal employees.

In Public Law Board No. 2960, Award 175, a similar dispute arose between the Carrier and Maintenance of Way where the Signal employees were the beneficiary of the assignment of construction of "a wooden retaining wall to support the ground fill upon which the supporting platform for the signal and battery box ... was to be constructed" That Board denied the claim to the work by Maintenance of Way. Citing the Scope Rules of Maintenance of Way and the Organization, and further noting

that the Maintenance of Way Scope Rule was "less specific" than the Organization's Scope Rule, that Board observed:

"This is a case where the language in the contracts of two different crafts seems to grant rights to the same work to both groups."

We agree with that observation. Because the disputed work is not specifically reserved by the Organization's Scope Rule to Signal employees and because the Organization has not demonstrated the existence of exclusive history, custom or practice whereby Signal employees have performed the work, we must deny the claim.

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 6th day of May 1997.