

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33485
Docket No. SG-34348
99-3-97-3-973**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Chicago & North
(Western Transportation Company)**

STATEMENT OF CLAIM:

“Claims on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago & Northwestern Transportation Co. (CNW):

A. Claim on behalf of A.C. Cunningham, D.W. Hockens, M.D. Vanlandingham, W.E. Manfredi and M.J. David for payment of 10 hours each at the straight time rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 201.93 on the Mason City Subdivision, and deprived the Claimants of the opportunity to perform that work. Carrier’s File No. 1048307, General Chairman’s File No. S-AV-322, BRS File Case No. 10493-CNW.

B. Claim on behalf of A.C. Cunningham, D.W. Hockens, M.D. Vanlandingham, W.E. Manfredi and M.J. David for payment of 10 hours each at the straight time rate, account Carrier violated the current Signalmen’s Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 201.84 on the Mason City Subdivision, and deprived the Claimants of the opportunity to perform that work. Carrier’s File No. 1048308, General Chairman’s File No. S-AV-323, BRS File Case No. 10494-CNW.

C. Claim on behalf of A.C. Cunningham, D.W. Hockens, M.D. Vanlandingham, W.E. Manfredi and M. J. David for payment of 10 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 199.75 on the Mason City Subdivision, and deprived the Claimants of the opportunity to perform that work. Carrier's File No. 1048309, General Chairman's File No. S-AV-324, BRS File Case No. 10495-CNW.

D. Claim on behalf of A.C. Cunningham, D.W. Hockens, M.D. Vanlandingham, W.E. Manfredi and M.J. David for payment of 30 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 201.58 on the Mason City Subdivision, and deprived the Claimants of the opportunity to perform that work. Carrier's File No. 1048310, General Chairman's File No. S-AV-325, BRS File Case No. 10496-CNW.

E. Claim on behalf of A.C. Cunningham, D.W. Hockens, M.D. Vanlandingham, W.E. Manfredi and M. J. David for payment of 30 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 199.69 on the Mason City Subdivision, and deprived the Claimants of the opportunity to perform that work. Carrier's File No. 1048311, General Chairman's File No. S-AV-326, BRS File Case No. 10497-CNW.

F. Claim on behalf of L.M. Sorenson, G.J. Robinson, C.L. Foreman and K.C. Colgazier for payment of 20 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 327.80 on the Boone Subdivision, and deprived the Claimants of

the opportunity to perform that work. Carrier's File No. 1043006, General Chairman's File No. S-AV-312, BRS File Case No. 10498-CNW.

G. Claim on behalf of L.M. Sorenson, G.J. Robinson, C.L. Foreman and K.C. Colgazier for payment of 20 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 324.50 on the Boone Subdivision, and deprived the Claimants of the opportunity to perform that work. Carrier's File No. 1043005, General Chairman's File No. S-AV-311, BRS File Case No. 10499-CNW.

H. Claim on behalf of L.M. Sorenson, G.J. Robinson, C.L. Foreman and K.C. Colgazier for payment of 20 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 323.0 on the Boone Subdivision, and deprived the Claimants of the opportunity to perform that work. Carrier's File No. 1043004, General Chairman's File No. S-AV-310, BRS File Case No. 10500-CNW.

I. Claim on behalf of L.M. Sorenson, G.J. Robinson, C.L. Foreman and K.C. Colgazier for payment of 20 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 320.10 on the Boone Subdivision, and deprived the Claimants of the opportunity to perform that work. Carrier's File No. 1043003, General Chairman's File No. S-AV-309, BRS File Case No. 10501-CNW.

J. Claim on behalf of L.M. Sorenson, G.J. Robinson, C.L. Foreman and K.C. Colgazier for payment of 20 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 318.80 on the Boone Subdivision, and deprived the Claimants of

the opportunity to perform that work. Carrier's File No. 1043002, General Chairman's File No. S-AV-308, BRS File Case No. 10502-CNW.

K. Claim on behalf of L.M. Sorenson, G.J. Robinson, C.L. Foreman and K.C. Colgazier for payment of 20 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 317.60 on the Boone Subdivision, and deprived the Claimants of the opportunity to perform that work. Carrier's File No. 1043001, General Chairman's File No. S-AV-307, BRS File Case No. 10503-CNW.

L. Claim on behalf of J.W. Braden and C.R. McDaniel for payment of 10 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 321.65, and deprived the Claimants of the opportunity to perform that work. Carrier's File No. 1039621, General Chairman's File No. S-AV-299, BRS File Case No. 10504-CNW.

M. Claim on behalf of J.W. Braden and D.W. Wermager for payment of 10 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 326.45, and deprived the Claimants of the opportunity to perform that work. Carrier's File No. 1039622, General Chairman's File No. S-AV-298, BRS File Case No. 10505-CNW.

N. Claim on behalf of J.W. Braden and D.W. Wermager for payment of 10 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 321.67, and deprived the Claimants of the opportunity to perform that work. Carrier's File No.

1039623, General Chairman's File No. S-AV-297, BRS File Case No. 10506-CNW.

O. Claim on behalf of J.W. Braden, D.W. Wermager, C.R. McDaniel, R. E. Countryman, and C. T. Windschitl for payment of 40 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 321.66, Logan, Iowa, and deprived the Claimants of the opportunity to perform that work. Carrier's File No. 1039624, General Chairman's File No. S-AV-296, BRS File Case No. 10507-CNW.

P. Claim on behalf of J.W. Braden, D.W. Wermager, C.R. McDaniel, R.E. Countryman, and C.T. Windschitl for payment of 40 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 326.22, East Mo-Valley, Iowa, and deprived the Claimants of the opportunity to perform that work. Carrier's File No. 1039620, General Chairman's File No. S-AV-295, BRS File Case No. 10508-CNW.

Q. Claim on behalf of L.M. Sorenson, G.J. Robinson, C.L. Foreman and K.C. Colgazier for payment of 10 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 328.49 on the Boone Subdivision, and deprived the Claimants of the opportunity to perform that work. Carrier's File No. 1037972, General Chairman's File No. S-AV-292, BRS File Case No. 10509-CNW.

R. Claim on behalf of L.M. Sorenson, G.J. Robinson, C.L. Foreman and K.C. Colgazier for payment of 20 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at

Mile Post 54.00 on the Sioux City Subdivision, and deprived the Claimants of the opportunity to perform that work. Carrier's File No. 1037968, General Chairman's File No. S-AV-291, BRS File Case No. 10510-CNW.

S. Claim on behalf of L.M. Sorenson, G.J. Robinson, C.L. Foreman and K.C. Colgazier for payment of 20 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 55.46 on the Sioux City Subdivision, and deprived the Claimants of the opportunity to perform that work. Carrier's File No. 1037969, General Chairman's File No. S-AV-290, BRS File Case No. 10511-CNW.

T. Claim on behalf of T.J. Yetmar, J.R. Walker, and D.M. Pollard for payment of 20 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 56.70 on the Sioux City Subdivision, and deprived the Claimants of the opportunity to perform that work. Carrier's File No. 1037970, General Chairman's File No. S-AV-289, BRS File Case No. 10512-CNW.

U. Claim on behalf of T.J. Yetmar, J.R. Walker, and D.M. Pollard for payment of 20 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 52.75 on the Sioux City Subdivision, and deprived the Claimants of the opportunity to perform that work. Carrier's File No. 1038336a, General Chairman's File No. S-AV-288, BRS File Case No. 10513-CNW.

V. Claim on behalf of L.M. Sorenson, G.J. Robinson, C.L. Foreman and K.C. Colgazier for payment of 10 hours each at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it used non-covered employees to perform the covered work of wiring a signal instrument house that was installed at Mile Post 54.74 on the Sioux City Subdivision, and deprived the Claimants

of the opportunity to perform that work. Carrier's File No. 1038336, General Chairman's File No. S-AV-287, BRS File Case No. 10514-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.

The instant claims all involve Carrier's use of signal instrument houses that were wired at Carrier's Signal Shop in Sedalia, Missouri. The Claimants are all employees covered by the Organization's Agreement with the Chicago & Northwestern Transportation Company, which was acquired by Carrier. Signalmen employed at the Sedalia shop were represented by the Organization but were not subject to the Chicago & Northwestern Agreement. There is no dispute that Carrier did not give the Organization notice prior to any of the transactions at issue.

A September 17, 1987, Memorandum of Agreement provides, in pertinent part:

"Effective September 17, 1987, it is understood and agreed that before the C&NW purchases pre-wired signal cases, pre-wired bungalows, or component racks from a supplier for installation by Signal Department personnel, the General Chairman shall be advised by the Company in writing 30 days in advance, unless an unusual circumstance occurs, of the necessity based on one or more of the following criteria:

- A. The cost to C&NW due to having this work done by C&NW forces exceeds the cost to C&NW when another source is used, or

- B. C&NW signal constructions forces are not qualified, or
- C. Time in which to have the work performed by C&NW forces would delay the completion of the project for which the signal cases are intended, or
- D. There are no Signal Department employees furloughed due to inability to hold a position in the exercise of seniority at the time the purchase order is executed."

The instant claims raise the question of the meaning of the word "purchases" as used in the Agreement. The record is far from ideal for deciding this issue. Fortunately, the Board need not reach this issue. It is clear that if there were purchases, the sole violations would be the failures to give notice. Had notice been given, Carrier would have been able to "purchase" the pre-wired signal instrument houses because there were no Signal Department employees furloughed due to inability to hold a position in the exercise of seniority. Therefore, no monetary remedy is called for. We will sustain the claim to place Carrier on notice that it must give notice in the future before going through with a purchase.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 22nd day of September 1999.