

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Adolph E. Wenke, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA**

**THE LONG ISLAND RAIL ROAD COMPANY**

**STATEMENT OF CLAIM:** Claim that Assistant Signalmen J. J. Carcich, Jr., J. T. Lavan, T. G. Malkus, and J. H. Adams and Helpers Joseph Miller, Vincenzo Letterille, C. F. Doty, and John Platt, Jr., be paid the difference between what they would have earned as signalmen and the amounts actually received January 5 and 14, and February 25, 1944, account employes from departments other than the T. & S. Department painting T. & S. equipment at Woodside and on the Port Washington Branch of the Long Island Rail Road.

**EMPLOYEES' STATEMENT OF FACTS:** On January 5 and 14 a B. & B. painter gang, while performing other work on Signal Bridge 3031 west of Woodside Station, painted signal conduits and condulets on the bridge. On February 25 a machine operator, while painting other apparatus between Auburndale and Little Neck, North Side Branch, touched up the derails and painted the top service of ball handle of switch throw lever.

Instructions have been in effect, at least since January 13, 1943, that only T. & S. employes are to paint the equipment and apparatus maintained by them.

There is an agreement in effect between the parties to this dispute bearing effective date of June 1, 1943 which should be considered as a part of the record in this dispute.

**POSITION OF EMPLOYEES:** The Brotherhood contends that the painting of signal conduits and condulets is signal work as outlined in the Scope of the agreement and should be performed by Signal Department employes. The Scope of the agreement is here quoted for your ready reference:

"These Rules, subject to the exceptions hereinafter set forth, shall constitute separate Agreements between the Pennsylvania Railroad Company, The Long Island Rail Road Company and Baltimore and Eastern Railroad Company and their respective Telegraph and Signal Department employes, of the classifications herein set forth (and hereafter these Agreements for the sake of convenience shall be referred to as 'the Agreement')—engaged in the installation and maintenance of all signals, interlockings, telegraph and telephone lines and equipment including telephone and telegraph office equipment, wayside or office equipment of communicating systems (not including such equipment on rolling stock or marine equipment), highway crossing protection (excluding highway crossing gates not operated in conjunction with track or signal

**OPINION OF BOARD:** This claim involves alleged violations of the Scope Rule of the parties' effective agreement.

This Division has often stated the rule that work of a class covered by the Scope Rule of an agreement and not within any exception contained therein or within any exception recognized by this Board belongs to the employees in whose behalf it was made and cannot be delegated to others without violating the agreement. It imposes a definite obligation upon the Carrier to assign work covered by the Agreement to the employees specified.

And, as stated in Award 1501, "A competent and fully qualified organization of signalmen cannot be maintained by any carrier if various little parts of its work are to be chiseled off and given to other crafts."

The Carrier admits that the signal equipment attached to the bridge was within the scope of the Signalmen's Agreement, subject to their maintenance and that it had issued instructions to that effect. However, on January 5, 1944, when a B. & E. gang was painting the bridge structure they unavoidably smeared some paint on the four conduits and condulets attached thereto. Because of such smearing the Foreman in charge, contrary to his instructions, had his men dress up such smeared conduits and condulets by painting them and, in addition thereto, painted about five feet of pipe. On January 14, 1944, a B. & B. gang, while painting the bridge, again unavoidably smeared some paint on these conduits and condulets but did not paint them.

It is apparent that what took place on January 14, 1944, was not a violation. What was done on January 5, 1944, in dressing up the conduits and condulets, after they had been unavoidably smeared by the B. & B. gang of painters while painting the bridge, and the painting of five feet of pipe was a violation. However, it was contrary to Carrier's instructions, not an intentional violation by the Carrier and so small and trivial that no award should be made thereon.

As to the work done by a machine operator of the track department on February 25, 1944, in "touching up" derails and painting the top surface of ball handles of switch throw levers, we find this work, as to switches of the T-20 type, to be within the scope of the effective Agreement. Carrier's contention that it has always been the practice to have employees of the Track Department do this work cannot further avail it when, by their agreement, the parties have placed it within the scope of the Signalmen's Agreement.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier has violated the Agreement.

#### AWARD

Claim sustained as to February 25, 1944, but denied as to January 5, 1944, and January 14, 1944.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 28th day of October, 1947.