Award No. 3687
Docket No. SG-3676

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY

(Joseph B. Fleming and Aaron Colnon, Trustees)

STATEMENT OF CLAIM: (a) Claim of the Brotherhood that the Carrier violated the Signalmen's agreement when, on or about May 1, 1943, and continuing until on or about March 31, 1944, it assigned or otherwise diverted generally recognized signal work to workers or other persons not covered by the agreement.

(b) Claim that the employes covered by the Signalmen's agreement, who were adversely affected by reason of this violation, be compensated at their proper rate of pay on the basis of time and one-half for the amount of time equivalent to that consumed by outside workers in performing this work.

EMPLOYES' STATEMENT OF FACTS: An agreement, bearing effective date of July 1, 1938, is in effect between The Chicago, Rock Island and Pacific Railway Company, The Chicago, Rock Island and Gulf Railway Company and the Brotherhood of Railroad Signalmen of America, representing all of the employes of the Carrier who perform generally recognized signal work. This agreement governs the rates of pay, hours of service and working conditions of all employes performing the work covered by the scope of the Signalmen's agreement. The scope of the Signalmen's agreement defines the classes of work generally recognized as signal work. There are no exceptions of any nature to the scope rule, which provides for the diversion of the signal work involved in this dispute. The scope rule of the agreement specifically covers the constructing, installing, servicing, maintaining and repairing of signal high tension and other lines, poles, fixtures, wires and cables, pertaining to railroad signaling and interlocking, and all other generally recognized signal work.

During the period of time involved in this claim workers not covered by the agreement performed generally recognized signal work when they constructed and reconstructed signal lines. During construction and reconstruction of the signal line these outside workers performed generally recognized signal work, such as stringing signal control line wires, and other wires and cables used for railroad signaling. They also transferred signal cross arms, installed guy wires, transferred signal cables, and other work in connection with signal lines. All the work involved in this claim is generally recognized as signal work.

of the Signal Department employes were working overtime during this period and so far as we can find, no employe represented by the Brotherhood of Railroad Signalmen was adversely affected in any way because of the Carrier's action in meeting the exigencies of a national emergency. The work performed by linemen was performed during the normal tour of duty of the Signalmen. Hence, the Signalmen were not, as we see it, adversely affected. See Award 1453.

It is unthinkable that the Petitioner should take a position, if it does, that employes on adjacent territories to the locations on which the alleged violations occurred could have been adversely affected by reason of the work enumerated above. This is true because as we have said before, all of the employes were upgraded to the extent of their capabilities and qualifications (some actually beyond that point) and practically all of them were working overtime. It is inconceivable that the Organization should contend that the Carrier should be obliged to call employes from adjacent territories or from any territories to make an installation of a CTC system particularly after their regular working hours and overtime had been worked on those dates. Eight hours has consistently been recognized as a day's work, but as we have said before, due to the shortage of manpower, the signal employes were in most instances working a considerable amount of overtime during the period covered by these claims. It is not only unthinkable, impracticable and unreasonable but it appears to the Carrier to be entirely preposterous for anyone to argue that the Carrier could have made such installation at night. Manifestly employes cannot work day and night both over any extended period.

The Carrier urges that the alleged technical violation of the scope rule of the Signalmen's Agreement which presumably the employes are intending to aver must be without substance when all the evidence is in. Broader considerations are controlling and determinative in this docket. The employes' totally unrealistic position is unconvincing. The Carrier considers material and relevant the fact of its dire manpower shortage. The fact that it was confronted with the necessity of performing certain work within a limited time; the fact of the historical development of practice with respect to the maintenance of pole lines on this property; the fact that it is unreasonable and entirely impractical to make installations and do the work which is enumerated in the Carrier's Statement of Facts at night and, among other considerations, the fact that the Carrier must have appropriate respect for its obligations under its agreement with the employes represented by the International Brotherhood of Electrical Workers and the fact that all available signalmen were working steadily and could not have sustained any loss.

Should the Board conclude that when the scope rule of the Signalmen's Agreement is considered in the light of the history of the maintenance of pole lines on this property and the provisions of the Linemen's Agreement, that there is ambiguity then we urge that the actions of the parties are admissible evidence to indicate their intentions. Assuredly the widespread, long standing practice of having linemen maintain poles is controlling as to the intent of the parties.

We therefore, respectfully petition your Board to deny this claim.

OPINION OF BOARD: Carrier's contention that the claim is not sufficiently definite in that it fails to name the employes who were adversely affected by reason of any violation, the basis of their claim, and the amount claimed, is without merit based on previous awards of this Division. We have said: "The fact that the claim is general and fails to name the claimants except as a class is not a bar to the disposition of the claim." See Awards 3251 and 3423.

In numerous awards this Division has stated and reaffirmed the holding 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 employes 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 employes specified.

Using as a basis the division of the work as set out by the Carrier, we think the following work was within the Scope of the Signalmen's agreement and that the Carrier violated such agreement by having it done by employes of the Communications Department:

A. All work done in constructing a C. T. C. signal system at points on the Trenton-Allerton and Rock Island Division of the Carrier during the period covered by the claim.

B. All work done in connection with signal line wires while rebuilding the joint telephone-telegraph pole lines on the Chicago, Rock Island and Des Moines Divisions of the Carrier during the period covered by the claim.

C. All work done in connection with signal wires in connection with a change of the joint telephone-telegraph line and grade revision at Colfax, Iowa, on the Des Moines Division of the Carrier during the period covered by the claim.

D. We find that the conversion of the signal wires, no longer being used as a signal circuit, for use as a communication circuit is not work within the scope of the Signalmen's Agreement.

It is not intended hereby to say that all work done by communications department employes under B and C was within the scope of the Signalmen's Agreement but what we do hold is that work done directly in connection with the signal line wires while rebuilding or changing the telephone-telegraph line is within the scope thereof.

As to Carrier's contention that the work done in connection with signal line wires under situations such as disclosed in B & C has always, as a matter of practice, been done by Communications Department employes is controlled by Rule 96 of the effective Agreement. See also Award 1501. It cannot be sustained.

Apparently for reasons of its own, that is, in order not to disturb the Carrier's employes doing Signalmen's work in the position they then held, the Carrier did not bulletin the positions to cover the foregoing work in accordance with the rules of the effective Agreement. Carrier often refers to the fact that such bulletining would have been to no purpose except to possibly cause a shifting of its own employes already engaged in signalmen's work. Whether or not bidders would have been available from the men in the signal department was never determined in the manner provided by rules of the effective agreement for the work performed was never bulletined. It does seem that positions bulletined during that period were generally filled and had a surplus of bidders. It was the duty of the Carrier to comply with the effective Agreement.

As to the individual employes of the Signal Department, if any, who have been adversely affected by the acts of the Carrier in its violation of the Agreement, and their rights because thereof, we do not here determine as it has neither been presented nor is it sufficiently brought out in the record. What we do determine is that there has been a violation of the Scope Rule of the parties' effective Agreement and that any employes covered by the Signalmen's Agreement, who were adversely affected by reason thereof, have a right to recover whatever they may be entitled to under the rules of their effective 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 Employes involved in this dispute are respectively carrier and employes 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 violated the Agreement.

AWARD

Claim (a) sustained. Claim (b) sustained as to the right of employes, who were adversely affected by reason of the violation, to recover.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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