

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE LONG ISLAND RAIL ROAD COMPANY, DEBTOR

David E. Smucker and Hunter L. Delatour, Trustees

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Long Island Rail Road that:

(a) The Carrier violated the provisions of the current Telegraph and Signal Agreement, effective June 1, 1943, when it allocated work that is included in the Scope of this Agreement, consisting of the decking of signal bridges on the Long Island Rail Road (namely, the two Home Signal Bridges at Hollis Interlocking) on February 20, 23, 25 and 26, 1946, to the employees of the Bridge and Building Department who hold no seniority rights under the current T. & S. Agreement.

(b) The six senior Signalmen in either Gang No. 1 or No. 2, namely, Wm. J. Streater, J. H. Cammann, Frank Pearsall, C. S. McGough, J. H. Plunkett and T. L. McMillan, represented by the Brotherhood, be paid eight hours at the punitive rate for the following dates, February 20, 23 and 26, 1946, and that the first five employees named above be paid eight hours at the punitive rate for February 25, 1946, account of Bridge and Building Department employees doing work that should have been assigned to the T. & S. employees as listed above.

EMPLOYEES' STATEMENT OF FACTS: The scope work involved in this dispute constitutes the decking, and repairs of same, on signal bridges.

According to the Maintenance of Way 40-E Time Sheets prepared by Carpenter Foreman, Philip Cassidy, the following number of hours were consumed in the renewal of decking on signal bridges at Hollis Interlocking:

February 20, 1946—40 hours—equivalent to five men
February 23, 1946—40 hours—equivalent to five men
February 25, 1946—32 hours—equivalent to four men
February 26, 1946—48 hours—equivalent to six men

Foreman Cassidy supervised the work of the Bridge and Building men in the performance of the above work on the dates shown.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is required to give effect to the said Agreement and to decide the present dispute in accordance therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Trustees of The Long Island Rail Road Company, Debtor, conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

(Exhibits not reproduced.)

OPINION OF BOARD: On February 20, 1946, Carpenters under the Maintenance of Way Department completely renewed the wooden decking on two signal bridges at "Hollis" Interlocking. Except for a device fastened to the bridge to steady a power line, the bridge is used exclusively to support signal apparatus, and the decking is used by members of the Telegraph and Signal Department for installing and maintaining signals.

The Petitioner contends that this work should have been given to employees under the Agreement of the Carrier with the Brotherhood of Railroad Signalmen of America. The Organization relies on the Scope Rule contained in its Agreement, particularly that portion of the rule reading:

"* * * and all other work in connection with installation and maintenance thereof that has been generally recognized as telegraph, telephone, or signal work * * *"

The Petitioners represent that from 1929 the work of maintaining the decking on signal bridges has been given to men in the Telegraph and Signal Department. They support this by the joint statement of facts by the Superintendent and Local Chairman of the Maintenance of Way (Case No. 183) where it is said: "Since that time 1930) the work has been taken care of by employees in the Telegraph and Signal Department." They have also submitted a statement signed by 25 employees of the Telegraph and Signal Department that they (T. & S. men) have for a long period of time performed this work.

The contention of the Carrier is that the work of installing and maintaining the decking on signal bridges is not work belonging exclusively to crews in the Telegraph and Signal Department. The Carrier supports this contention by showing that such work prior to 1930 was done by Maintenance of Way Crews, that since 1930 it has been done by crews from both Departments, and that the work of erecting and installing signal bridges, including the initial decking, has been performed by Maintenance of Way Department employees.

Neither the Signalmen's Agreement nor the Maintenance of Way Agreement by specific terms include within their respective Scope Rules any reference to signal bridges or the maintenance of such. Nevertheless, if the parties intended the work to be included within the Scope of the Agree-

ment, it belongs to the employees covered thereby. This principle was stated by the Board, Referee Wenke assisting, in Award 3684, as follows:

"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."

In order to determine whether the maintenance of the decking on the signal bridges at "Hollis" Interlocking is work covered by the Scope Rule, we must find that the parties so intended to include it within the kind of work as "has been generally recognized as" Signalmen's work. To determine whether they intended thereby to include such work within the Scope Rule, recourse may be had to the conduct of the parties under the terms of their Agreement. Where the language of the Agreement is indefinite, the mutual interpretation of the parties will aid in arriving at a definite conclusion as to their intent. (Award 2436.)

The first Agreement on this property with the Signalmen was entered into on June 1, 1929. Prior to that time, the work of installing and maintaining the decking on signal bridges was performed by employees of the Bridge and Building Department. But following the execution of the Signalmen's Agreement, the work of maintaining the decking was performed by employees in the T. & S. Department. This transfer of work from one group to another is informative of the construction the parties placed on the terms of their Agreement. The Signalmen's Agreement was revised in 1943. It does not appear that the question of maintaining the decking on signal bridges was a subject of negotiation when the Agreement was then revised. It was not until 1945 that a dispute as to the interpretation of the Signalmen's Agreement in this respect arose.

Consideration should also be given to the fact that the two signal bridges at "Hollis" Interlocking, where the work was performed which gave rise to this controversy, are used, with minor exception, solely for signals; and the decking is used, for all practical purposes, only by employees in the Telegraph and Signal Department. On these bridges the decking is essential only to the employees repairing and maintaining signal apparatus.

We recognize that in many situations the line of demarcation distinguishing the work of one craft from that of another is illusory and difficult of definition. The record here shows that some work of repairing and maintaining the decking on signal bridges has been done by employees in the Maintenance of Way Department. But it also appears that such work has been done chiefly by the T. & S. Department. And when consideration is given to the exclusive use to which the decking is applied, to the fact that after the Agreement was negotiated in 1929 the work was given to employees in the T. & S. Department, and to the fact that no exception was made in the Agreement respecting this work when it was re-negotiated in 1943, we must conclude that the parties understood and intended that the maintenance of the decking on signal bridges used exclusively for signal apparatus was within the Scope of the work reserved by the Agreement to Signalmen.

It follows, therefore, that the employees covered by the Signalmen's Agreement were entitled to the work of renewing the decking on the signal bridges mentioned in the claims hereinabove set forth. To the extent that such work was performed by persons not covered by such Agreement, they suffered a loss; and, based on the well-established precedents of this Division, they are entitled to reparation at the pro rata rate, not the punitive rate.

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

The Carrier violated the Agreement when it permitted persons not covered by the Signalmen's Agreement to renew the decking on the signal bridges at the "Hollis" Interlocking.

AWARD

Claim (a) sustained.

Claim (b) sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of March, 1951.