Award No. 7915
Docket No. SG-7598

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dwyer W. Shugrue, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America that:

(a) The Carrier violated and continues to violate the Signalmen's agreement when it assigned or otherwise diverted signal work specifically enumerated in the scope of said agreement to employes who are not covered by the agreement.

(b) 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 those employes who are not covered by the agreement in performing this work.

EMPLOYES' STATEMENT OF FACTS: The Signal Maintainer, with headquarters at Etowah, Tenn., has as part of his assigned territory that portion of the Knoxville and Atlantic Division between Etowah, Tenn., and Marietta, Ga. (known as the "Old Line"). There are highway crossing signals on this portion of the territory which are maintained by the Signal Department employes; however, the train-order signals on this portion of the Signal Maintainer's territory are installed and maintained by employes who are not covered by the Signalmen's agreement. These train-order signals are located at the following points:

Farner, Tenn.	Jasper, Ga.
Ducktown, Tenn.	Tate, Ga.
Turtletown, Tenn.	Nelson, Ga.
Blue Ridge, Ga.	Ball Ground, Ga.
Ellijay, Ga.	Canton, Ga.
Whitestone, Ga.	Holly Springs, Ga.
	Woodstock, Ga.

On the Cumberland Valley Division, a Signal Maintainer and Helper are located at Loyall, Ky., whose assigned territory is all that part of the division South of Barbourville, Ky. On the same division, a Signal Maintainer and Helper are located at Corbin, Ky., whose assigned territory is that part of the Cumberland Valley Division between Barbourville, Ky., to Corbin, Ky.

1. The carrier submits that the instant claim should be dismissed because the petitioner has presented nothing but a vague and indefinite claim in respect to essential particulars necessary for a proper determination. The petitioner has not identified the individuals for whom claim is made or set forth the specific date or dates and locations involved, nor the amounts of time for which claim is made. The burden to come forward with and to sustain that which it claims rests on the organization and not on the carrier. It is obvious that the petitioner has failed to sustain that burden in this case.

2. In the absence of notice to B&B employes represented by the Brotherhood of Maintenance of Way Organization, who have performed maintenance on these train order signals since 1890, it is only proper that they be given an opportunity to participate in the proceedings. On this point alone the instant dispute should be dismissed.

While train order signals are not written into the scope of the maintenance of way agreement, work for which this claim is made has been required of B&B employes since 1890. When the signalmen's scope rule was rewritten in 1949, it was not the understanding of the carrier that it contemplated a change in the practice of maintaining these particular signals.

The carrier respectfully calls this Board's attention to the following awards:

> "* * * However, under the circumstances of this claim relating to 'all similar claims on subsequent dates' should be referred back to the parties without prejudice." Award 13406, D. Whiting, referee, First Division.
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> "The claim is indefinite in that it shows no loss of work on the part of anyone and does not name claimants. To warrant a sustaining award undoubtedly specific facts would have to be developed which is not a proper function for this Board. * * * The claim should be dismissed on the ground that it is too vague and indefinite to receive consideration." Award 15300, Rader, referee, First Division.
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> "That part of the claim which is asserted for unnamed persons on unnamed dates is not sufficiently specific and must be dismissed for want of jurisdiction. * * *" Award 16201, D. O'Malley, referee, First Division.

The carrier desires to point out that no signalmen have been adversely affected. During the period involved in this dispute they perform service on each day their assignment was scheduled to work, exceptions being of their choosing.

The carrier submits that in view of all the circumstances, claim should not be sustained.

(Exhibits not reproduced).

OPINION OF BOARD: This dispute involves a charge, initiated on August 29, 1950, and running from that date forward, that 31 train order signals in non-signaled territory on Carrier's Knoxville and Atlanta and Cumberland Valley Divisions are installed and maintained by employes not covered by the Signalmen's Agreement. These train order signals are within the limits of the territory assigned to the signal maintainers at Etowah, Tennessee, and Loyall and Corbin, Kentucky. The signal equipment on these territories includes tunnel signals, signals protecting slide detector fences, highway crossing signals, automatic signals at interlocking plants, etc., which are maintained by Signal Department employes.

The Scope Rule, effective February 16, 1949, reads as follows:

"Rule 1. SCOPE.

This agreement covers the rates of pay, hours of service and working conditions of all employes, classified herein, engaged in the construction, installation, repair, inspecting, testing and maintenance of all interlocking systems and devices; signals and signaling systems; wayside devices and equipment for train stop and train controls; car retarders and car retarder systems; power operated gate mechanism; automatic or other devices used for protection of highway crossing; spring switch mechanism; electric switch targets together with wires and cables; **train order signals in signaled territory and elsewhere within the limits of a signal maintainer's territory**; power or other lines, with poles, fixtures, conduit systems, transformers, arresters and wires or cables pertaining to interlocking and signaling systems; interlocking and signal lighting; storage battery plants with charging outfits and switch board equipment; sub-stations, current generating and compressed air plants, exclusively used by the Signal Department, pipe lines and connections used for Signal Department purposes; carpenter, concrete and form work in connection with signal and interlocking systems (except that required in buildings, towers and signal bridges); together with all appurtenances pertaining to the above named systems and devices, as well as any other work generally recognized as signal work." (Emphasis added.)

The Petitioner maintains that the inclusion of the language "train order signals in signaled territory and elsewhere within the limits of a signal maintainer's territory;" in the effective Agreement clearly and unambiguously provided that such work should be assigned to signalmen even though previously it had been assigned to and performed by Bridge and Building forces covered by the Maintenance of Way Agreement with this Carrier. The claim is for time and one-half for the amount of time equivalent to that consumed by other than signal forces from August 29, 1950, forward.

The Carrier maintains that it did not mean by the language of the Signalmen's Scope Rule to make any change in the practice of maintaining these particular signals. It does not deny that the maintenance of train order signals is not written into the scope of the Maintenance of Way Agreement but asserts that since 1890 B&B employes have been required to do this work.

In addition to its answer on the merits, Carrier relies on the following procedural arguments: that

1) the Division lacks jurisdiction because of its failure to give proper notice under Section 3(j) of the Railway Labor Act, as amended; and that

2) Petitioner did not comply with the provisions of Rule 54(a), set forth below, in that the claim was vague and indefinite in respect to essential particulars necessary to a proper determination, to wit, that Petitioner has not identified the individuals for whom claim is made or set forth the specific date or dates and locations involved, nor the amounts of time for which claim is made.

"Rule 54. TIME LIMITS FOR HANDLING CLAIMS.

(a) All claims and grievances, other than discipline cases referred to in Rule 55, not presented to the Signal Supervisor, in writing, within 90 days from the date the employe received his pay check for the pay period involved, are barred, except: * * *"

The motion in this docket to the effect that action be withheld pending the giving of notice of hearing to the other parties involved is disposed of in accordance with the Opinion in Docket MW-5875, Award 7913.

In considering the merits herein, we are confronted with a claim of violation of the Scope Rule set forth above. There is no doubt that the train order signals involved here are within the confines of the Signal Maintainers' territory. It cannot be said that the language of the Scope Rule, insofar as it is pertinent, is ambiguous or general in terms. It is, in fact, crystal clear and specific. As this Board has soundly held, " 'It is an established rule, founded on good reason, that where a written agreement has been entered into, all prior and contemporaneous negotiations and understandings are merged in the writing. The written agreement expresses the intentions of the parties. Any other rule would destroy the benefits of a written agreement.' The Carrier is here contending for an exception to the rule that does not exist in the written rule." Award 3292.

Nor can this case be considered as a jurisdictional dispute between the signalmen and maintenance employes. A jurisdictional dispute exists when the Carrier has not contracted with either of two or more crafts and a dispute arises as to which is entitled to perform the work. Where the Carrier has contracted with one or both parties to a dispute, no jurisdictional question is involved. It is then a matter of contract interpretation for this Board. We find here that this Carrier has contracted with the Signalmen for the particular work here described.

The Carrier has stated that in its negotiations, it did not mean by the new language added to the Scope Rule to make any change in the practice of maintaining these particular signals. An intention to change a prior practice becomes plain, when the parties deal directly with the subject of the practice and adopt an amendment which is inconsistent with it. While practice often serves to resolve ambiguities in an Agreement, practice cannot prevail over clear language.

The Board has come to expect literal compliance with such Agreements and will not give aid or succor to either party that finds itself dissatisfied with the bargain it had openly made.

With respect to compliance with Rule 54(a), the Carrier infers that the only properly presented claims are those filed by named employes for specific dates and locations. The record establishes the fact that this general and continuing claim was first presented by the Local Chairmen, in behalf of the signal employes on the Carrier's Divisions involved and at the locations specified, on August 29, 1950, and from that date until the controversy was settled. The Carrier admits that its past practice was adhered to after the effective date of the Agreement.

Under the facts and circumstances presented in this record, we believe that the filing of a general claim where the question at issue operates uniformly upon a class of employes that is readily determinable is a correct procedure. We do not interpret Rule 54 as to require individual employe filing with respect to every specific date or occurrence involved. The policing of an Agreement, clearly violated by Carrier, ought not be made unnecessarily difficult by requiring the filing of a multitude of claims when the violation decides the issue, except as to the amount of reparation due in each instance.

A joint check of the Carrier's records should be made to determine when violation occurred at the specified locations and the affected employes be paid reparations accordingly.

In accordance with our consistent prior awards, pro rata is the appropriate penalty for such a violation of the Agreement and the claim will be sustained at that 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 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 Agreement was violated.

AWARD

Claim sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May, 1957.