

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Marion Beatty, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

ERIE RAILROAD COMPANY

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

(a) The Carrier violated the Signalmen's Agreement effective June 1, 1944, Scope Rule, which was revised and signed October 10, 1951, effective October 16, 1951, when on or about November 11, 1952 it improperly assigned signal work covered by the Scope Rule and other provisions of the Signalmen's Agreement to General Signal Inspector L. H. Dyke, who was not covered by the Signalmen's Agreement.

(b) Leading Maintainer H. P. Lutz be compensated at pro-rata rate of pay for a number of hours equivalent to the number of hours General Signal Inspector L. H. Dyke was assigned to perform the generally recognized signal work, including the testing and inspecting of signal apparatus, appliances, and appurtenances in and/or around the Sterling, Ohio, interlocking plant, commencing on or about November 11, 1952, and again January 6 and 7, 1953.

EMPLOYEES' STATEMENT OF FACTS: On or about November 11, 1952, General Signal Inspector L. H. Dyke was ordered by the Carrier to make a detailed inspection and test of the signal interlocking at Sterling, Ohio.

The Carrier improperly assigned the signal work involved in this dispute to an employee who holds no seniority rights under the Signalmen's Agreement. The signal work involved in this dispute is the inspecting and testing of interlocking apparatus, appliances, and appurtenances which is an integral part of the controls and circuits of the signal system.

The signal work performed by General Signal Inspector Dyke is covered by the Scope Rule and other provisions of the Signalmen's Agreement. The claimant had established seniority under the Signalmen's Agreement; therefore, it reserved to him the right to perform the signal work involved.

This claim was filed with Signal Supervisor O. G. Carey, Kent Division, on January 9, 1953, and he denied the claim in a letter dated January 23, 1953. It was then appealed and handled in the prescribed manner, up to and including the highest designated officer of this Carrier, without securing a satisfactory settlement.

ing" is the same. In denying the claim involved in Award 6221, the Board held:

"The record shows that there was no signal failure. The Supervisor based upon his observation, determined that no signal work existed that would make it necessary to call the Claimant. Even if this 'observing' and 'looking' by the Supervisor be regarded as 'inspection' and 'testing' this Board in Award 1498, in a case involving the same Organization said: 'We concede, as claimed by the Carrier, that all inspection work is not covered by the agreement. Obviously, officials of a Railroad, both high and subordinate * * * do inspection work. This is carried on as an incident in the performance of their duties as officials * * *.' The Carrier's claim of a long established practice in the following statement in the record has not been denied: 'He was simply fulfilling his duties and obligations as a Supervisor, the same as he and other officers and supervisors have done since time immemorial, and all without prior complaint or claim from either the Employees or their representatives.'

"The Board must find that the Carrier is not required to call a Signal Maintainer so he can make a determination whether signal work exists for which he should properly be called. This Board in Award 4828 stated: 'All supervisory officers are charged with varying amounts of inspection work which is inherent in their positions. But it does not include the inspecting and testing necessary to the proper installation, maintenance and repair of the signal system.' * * *

"The Board from the evidence must conclude that the Supervisor in this case made only that inspection which was required and inherent in his position as a Supervisor in order to determine whether it was necessary to call the Claimant to perform signal work. The Petitioner did not sustain its burden of proof to show that the Supervisor did any of the inspecting or testing necessary to the installation, maintenance or repair of the signal system.

"In Award 4946 this Board stated: 'The yardmaster had the right * * * to examine for the purpose of determining if claimant should be called to make repairs.'

"The same principle is controlling under the facts in this case."

The Carrier submits that under the undisputed facts, the claim is without merit and should be denied.

(Exhibits not Reproduced.)

OPINION OF BOARD: September 12, 1952, a derailment occurred at Carrier's interlocking plant at Sterling, Ohio. The Organization makes no objection to the examination and inspections connected therewith. During the investigation, however, the maintenance condition of the plant was noted and the Signal Engineer ordered that a detailed inspection be made of the plant. Complainant was advised that it would be made and two months later, during the week of November 14, a thorough inspection was made with a followup inspection January 6 and 7. This grievance arises out of the November and January inspections.

These inspections were made by the following personnel working together:

- L. H. Dyke, General Signal Inspector;
- O. G. Carey, Signal Supervisor;
- H. P. Lutz, Leading Maintainer, the claimant herein;
- W. Ardel, Foreman of Maintainers.

It will be observed that the first two of these are supervisory and the other two are craft employees.

There is much in the file that is beside the issue. The Organization spends too much time arguing about who was to blame for the bad condition of the interlocking plant. In its submission the Organization repeatedly asserts the broad claim that work done by General Signal Inspector, Dyke, belonged to the Leading Signal Maintainer, Lutz, and then proceeds to build its case upon this assumption. It assumes the very point in issue and doesn't supply enough real evidence to support its case.

The real issue involved is whether the particular work done here by General Signal Inspector, Dyke, encroached upon the signal duties or work reserved exclusively by the Agreement to signalmen. We have a question of where to draw the line between duties of supervisors and duties of employees covered by the working Agreement.

The then current working Agreement between the parties does include the words "construction, installation, inspection, testing, maintenance and repair in signal shops or field, * * * and all other work generally recognized as signal work."

The Organization admits with admirable candor that all supervisory officers are charged with a varying amount of inspection work which is inherent to their positions. This Board has so held on previous occasions and common sense tells us that supervisory personnel have some right and duty to inspect the work of subordinates and this must have been understood at the time of drafting any Agreement.

We have the question of how much, where to draw the line beyond which we will say to management, "You may inspect this far and no further." There is no clear cut answer. It is a matter of degree and circumstances.

The Organization lists 175 items of inspection performed by Dyke. Its complaint is that Dyke did more than make an ordinary supervisory inspection, that he made a point by point test, that he "took the plant apart," so to speak, and we are convinced that he, together with the three others, did just that.

We hold, first, that Dyke did no testing. This much seems clear, Lutz, the claimant, did the physical work in all tests. He did the actual work in handling tools, cranking switch machines, pry testing of switch points, making adjustments, etc.

We hold next, after studying the list of 175 items which Dyke did perform and discussing them with both sides, that he did inspection that was inherent in supervision under the circumstances, that there is nothing in the Agreement or past practice which requires a General Signal Inspector to keep hands off, and that Dyke did not encroach upon work reserved exclusively to signal employees.

In view of the fact that the Railroad is responsible to the public for safe conditions on its road, responsible to its employees under the Federal Employer's Liability Act and responsible to the government under the Signal Inspection Act and other safety regulations, the Carrier has a duty to be **assured** and to **know** that conditions and equipment are safe. Its obligation is tremendous, much more so now than under common law.

In the case at hand management's judgment was that a rather detailed inspection was necessary by these four persons in order that it might have the necessary knowledge and assurance that conditions and equipment were right.

Of course these statutes and these legal obligations do not prevent the Carrier from contracting all inspection work to the Signalmen. Neither do

they relieve the Carrier of its contractual obligation to them, but these legal obligations are important in convincing us that the Carrier would never severely restrict its own right to know, its own right to be assured and its own right to inspect, at least not to the extent contended for by the Organization in this case.

We hold that there was no violation of the Agreement.

Our decision does not seem inequitable in light of the fact that the complainant, Lutz, was fully employed throughout the time in question and that there is no evidence in the record of his or anyone having lost compensation or any other advantage or opportunity.

(See Awards Nos. 1498, 1802, 4828 and 6221.)

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 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 there was no violation of the Agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August, 1957.